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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 154

THE PORTO RICO SUGAR COMPANY, PLAINTIFF IN
ERROR,

vs.
BAUTISTA VISO LORENZO.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
PORTO RICO.

FILED NOVEMBER 2, 1911.

(21,895.)

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OCTOBER TERM, 1909.

No. 669.

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INDEX.

	Original.	Print
Caption	1	1
Complaint	1	1
Copy of public instrument No. 93	6	4
Copy of public instrument No. 92	10	6
Deed of grinding contract No. 68	14	9
Deed of lease No. 38	18	11
Deed of lease No. 37	23	14
Demurrer to complaint, filed February 25, 1909	28	17
Motion for bill of particulars	29	18
Order overruling demurrer, &c.	30	18
Demurrer to complaint, filed May 18, 1909	30	19
Answer	31	19
Order granting leave to amend complaint	33	21
Exception to order allowing amendment of complaint	33	21
Order overruling demurrer and beginning hearing	34	21
Stipulation to proceed with eleven jurors	35	22
Order concluding hearing	35	22
Verdict	36	23
Motion for new trial	36	23
Order taking motion under advisement	38	24

	Original.	Print
Order overruling motion for new trial	38	24
Judgment	38	24
Opinion	39	25
Petition for writ of error and supersedeas	44	28
Order allowing writ of error	44	28
Assignment of errors	45	29
Bond on writ of error	53	34
Order extending time to prepare bill of exceptions, &c.	55	35
Order allowing bill of exceptions	56	36
Bill of exceptions	57	36
Testimony of Bautista Viso Lorenzo	57	36
Exhibit A—Letter, Negron to Viso, March 1, 1908.	57	37
B—Statements of account	58	37
C—Public instrument No. 93	64	41
Public instrument No. 92	68	44
Deed of lease No. 38	72	46
Deed of lease No. 37	77	49
Deed of grinding contract No. 68	82	52
Testimony of Jose Ramon Gallardi	88	57
Juan Palau	94	60
Juan Mendizabal	96	62
Bautista Viso Lorenzo	99	64
Exhibit E—Notification act No. 57	99	64
Plaintiff rests	103	66
Motion for nonsuit overruled	103	66
Testimony of Abelardo de la Haba Trujillo	103	66
Julio Gay	105	67
Wm. Shandon Marr	106	68
Antonio Roig	111	71
Tomas Subirana	112	72
Eduardo G. F. Vangas	113	72
Ramon Negron Flores	117	75
Gabrier Soler	119	76
Ramon Negron Flores (recalled)	119	76
Gabriel Soler (recalled)	121	78
Charles Thompson Parker	122	78
Andres Garcia	123	79
Defendant rests	124	80
Testimony of Bautista Viso Lorenzo (recalled)	124	80
Testimony of Ramon Negron Flores (recalled)	125	81
Charge to the jury	126	81
Instructions asked by defendant	131	85
Judge's certificate to bill of exceptions	135	87
Præcipe for transcript of record	136	87
Amendment to præcipe	137	88
Clerk's certificate	138	88
Writ of error	139	88
Citation	142	89
Marshal's return	142½	90

1 THE UNITED STATES OF AMERICA.
District of Porto Rico, ss:

At a Stated Term of the District Court of the United States for Porto Rico, Within and for the District Aforesaid, Begun and Held at the Court-rooms of said Court, in the City of San Juan, on the Second Monday of April, Being the Twelfth Day of that Month, in the Year of Our Lord One Thousand Nine Hundred and Nine, and of the Independence of the United States of America the One Hundred and Thirty-Third.

Present, the Hon. Bernard S. Rodey, Judge.

Among the proceedings had was the rendition of a judgment in the following cause, to wit:

BAUTISTA VISO LORENZO, Plaintiff,
vs.
THE PORTO RICO SUGAR Co., Defendant.

Be it remembered that heretofore, to wit, on the twelfth day of February, A. D. 1909, came the plaintiff by his counsel and filed his Complaint in this cause, which said Complaint is as follows, to wit:

BAUTISTA VISO LORENZO, Plaintiff,
vs.
THE PORTO RICO SUGAR Co., Defendant.

Complaint.

Bautista Viso Lorenzo, a subject of the King of Spain and a resident of Porto Rico, complains of the Porto Rico Sugar Company and says:

I.

2 That the defendant Company is a corporation duly organized and existing under the laws of Porto Rico for the purpose of grinding sugar cane and manufacturing sugar therefrom.

II.

That the defendant Company in May of 1907, succeeded to the Humacao Sugar Company, a corporation, up to that time, existing in Porto Rico for the purpose of grinding and manufacturing sugar and that the defendant Company having purchased the rights, contracts and properties of the said Humacao Sugar Company, became the legal successor thereof and bound and obligated itself to carry out and perform the contracts for the grinding of cane theretofore made by the said Humacao Sugar Company with its colonos, among which was numbered the plaintiff herein, and that the plaintiff on his part consented and agreed that his contracts, hereinafter set out, should be assigned to the defendant company by the said Humacao Sugar Company.

III.

That by virtue of said contracts and because thereof, plaintiff planted a large number of cuerdas with cane and cultivated and prepared the same for grinding during the year 1908 at which time the said Humacao Sugar Company and its legal successors, as aforesaid, the defendant herein, were by said contracts obligated to grind during the months of January to June of said year 1908; that the said number of acres of cane amounted to four hundred and seventeen (417) cuerdas of first and second year cultivation, and the crops on said lands were during said months of January to June, 1908, in the best of conditions and suitable for immediate grinding and reduction to sugar.

IV.

That plaintiff complied with each and every of the conditions imposed on *by* him by said contracts and stood and was at all times ready to deliver said canes to the defendant company during the said months of January to June of the said year 1908, but that the defendant company, disregarding the terms and conditions of said contracts, did fail and refuse to grind a great portion of said canes and did thereby cause a heavy loss to plaintiff during said year 1908 and for the succeeding years of said crop, aggregating many thousands of dollars.

V.

That the defendant company in the handling of that portion of canes aforesaid which it actually took and ground at the said mill and at an adjoining mill known as "El Ejemplo", failed to provide the necessary number of cars and workmen to handle said canes in the mode and manner set forth and required by said contracts and because thereof did occasion a great loss to plaintiff which also aggregates a sum of many thousands of dollars.

VI.

That defendant company did not grind all of the said canes which it was able to handle of those belonging to plaintiff, during the said months of January to June, 1908, but continued grinding said canes for several months after said months of June and that the canes thus ground, were, because of said delay, reduced in value and in production of sugar to the great loss of plaintiff in the sum of many thousands of dollars.

VII.

That the total aggregated loss of plaintiff because of the foregoing wrongful acts of defendants in violating the said contracts, amounts to the sum of twenty-three thousand dollars (\$23,000).

VIII.

That in addition to the contracts above set out, plaintiff and the said Humacao Sugar Company executed a contract by which the said Humacao Sugar Company bound itself to grind all of the

4 canes which plaintiff, as the lessee of one Florencio Berrios, should plant and cultivate on the lands belonging to said Berrios, upon the same terms and conditions of certain other contracts theretofore executed between said Humacao Sugar Company and Petronila del Carmen Rios y Berrios with one José Toro Ríos, of which latter contract the said Humacao Sugar Company had full knowledge.

IX.

That the said contract between plaintiff and the said Humacao Sugar Company was also, with the consent of plaintiff, assigned by said Humacao Sugar Company to the defendant company and that the defendant company bound itself to carry out and perform all of the terms and conditions thereof, and to pay damages, costs and attorney's fees in case of its violation by said Humacao Sugar Company. That plaintiff has fully complied with each and every of the terms and conditions of said contract binding on him, but that the defendant company has wholly failed and refused to carry out on its part the said contract and has failed and refused to grind a large part of said canes and did not supply defendant with the necessary means of transportation for the same and delayed the grinding of such portions of said canes as it received until long after June of 1908, at which time said canes had greatly depreciated in use and productive value, all to the damage of plaintiff in the sum of Five Thousand Dollars (\$5,000.00).

X.

That during all of the time since the breach of said contracts by defendant, plaintiff has been making judicial and extra-judicial demands upon defendant for the payment by it to him of such damages so sustained by him but that defendant has failed and refused to pay plaintiff the whole or any part thereof and that said judicial and extrajudicial demands have resulted in nothing.

Wherefore plaintiff prays for judgment against the defendant for the sum of Thirty Thousand Dollars (\$30,000.00) and
5 interests and costs.

HENRY F. HORD,
ARTURO APONTE, Jr.,
Attorneys for Plaintiff.

San Juan, P. R., Feb. 12th, 1909.

Arturo Aponte Jr. being duly sworn, on oath deposes and says: That he is the attorney for plaintiff; that he has read the foregoing complaint and that he is informed and believes the facts therein stated to be true and upon such information states them to be true and that the reason why the plaintiff does not make this affidavit is that he is absent in Humacao and cannot come to San Juan to make the same.

ARTURO APONTE, JR.

Registered No. 422.

Subscribed and sworn to before me the undersigned by Arturo Aponte, Jr. whom I know to be the person he represents himself to be, a resident of Humacao, P. R. this 12th day of February, 1909.

JULIO CÉSAR GONZÁLEZ,

[NOTARIAL SEAL.]

Notary Public.

6 Notarial office established on March 1st, 1901. Herminio Diaz. Lawyer & Notary Public. Copy of Public Instrument, No. 93. Executed by Mr. José Toro Ríos and Bautista Viso. Lease of Rustic Property. On December 21st, 1905. San Juan, Pto. Rico. Copy. Corrected.
Number Ninety Three.

In the City of Humacao, Porto Rico, on the twenty first of December, nineteen hundred and five, before me, Herminio Diaz Navarro, Counsellor at Law and Notary Public, with residence and open office in the capital of the island, San Justo Street, No. 12, appear:

Mr. José Toro Ríos, of legal age, married, property owner and of this city, in his own right and as attorney in fact of his wife,

Mrs. Lucía Guzman de Toro, of legal age, married, property owner, and of this city, as appears from the power of attorney executed before the notary of this city, Mr. Antonio Aldrey, copy of which he will present in due time, and

Bautista Viso Lorenzo, of legal age, widower, planter and property owner and resident of San Lorenzo:

I am acquainted with the parties hereto and assuring me that they have and having in my opinion the legal capacity necessary for the execution of this document, they state:

First. That Mr. Toro Ríos is the owner in fee simple of a rustic property situated in the ward of Anton Ruiz, of this municipal jurisdiction, consisting of two hundred and sixteen and thirty one hundredths cuerdas, equivalent to eighty four hectares, eighty nine areas and seventy six centiares, bounded on the North by the lands of the plantation "Mulas", by other lands of José Toro Ríos, on the South by the lands of Petra Ríos and Alfonso Faura and on the West by Alfonso Faura y Ríos which property Mr. Toro Ríos acquired by purchase from José Maria Cuadra, according to deed executed on the fourteenth day of March nineteen hundred and four before the Notary of this city Antonio de Aldrey, recorded at folio forty five of volume twenty of Humacao, parcel nine hundred and forty six, second inscription.

Second. That in accordance with the agreement of the parties hereto, the said Toro Ríos leases to Mr. Viso, for himself, his successors and heirs a part of the parcel which has been described in the foregoing paragraph, consisting of fifty four cuerdas, that is to say of twenty five hectares, fifteen areas and forty seven centiares, bounded on the North by the wire fence starting at the boundary line of the Faura Brothers and crossing the principal strip from east to West and ending at the swinging gate, on the south by a ditch which separates it from another property of Mrs. Petra Ríos, part of which

also have been leased this day to the party hereunto Mr. Bautisto Viso; on the East by a ditch which separates it from the principal strip and starting from the stream ends at the river, and on the West by a ditch which starts at the south boundary line and ends on the north boundary line.

Third. The lessor Mr. Toro Rios agrees to sell to the lessee Mr. Viso the second crop canes which remain in the portion of land leased, the delivery of which shall be made in accordance with the cutting of the canes actually planted, which shall be completed before the thirtieth of April, nineteen hundred and six, leaving the fixing of the price of these second crop canes, for the date of the delivery thereof and stating also that if the contracting parties do not agree as to the said price, a friend of both shall be named, who shall settle all the differences and whose decision shall be obligatory and unappealable for both parties.

Fourth. From the date of the delivery of the said second crop canes, the term of lease of the portion of the property, the subject matter of the present contract, shall begin and shall continue for six successive crops and end on the thirty-first of January nineteen hundred and twelve, the rental to be paid by the lessee in addition to one dollar, the consideration of this contract, shall be 8 ten dollars annually for each cuerda, the said rental shall be paid at the end of every six months but the party hereto Mr. Viso reserves the right of paying the same in advance and should he so do he shall be credited with interests at the rate of eight per cent annually.

Fifth. All the improvements made by the lessee on the property, of any nature whatsoever, including therein any building or construction, shall remain upon the completion of this contract, for the benefit of the property without the lessee having any right to exact any payment whatsoever from the lessor.

Sixth. Mr. Toro Rios agrees on his part that all the canes which the lessee plants upon this part of the property, shall be ground in the factory of the Humacao Sugar Company, agreeing for this purpose, to facilitate Mr. Viso for the transportation of the said canes, not only any railway and railway cars which may belong to the said factory, but also a kilometer of portable track: it being understood that the placing and return of the portable track shall be at the expense of the lessee, the return thereof to be made immediately upon his finishing with the use thereof.

Seventh. Mr. Toro Rios, in the same manner agrees that the Humacao Sugar Company shall pay to Mr. Viso for his canes, an amount in sugar equal to that paid to the most favored colono.

Eighth. It is an indispensable and primary condition of this contract that the lands leased shall be planted with canes and that they shall be ground by the Humacao Sugar Company, Mr. Viso, agreeing to load the same on the portable cars and take them to the railroad as well as to cut cane not less than twelve months old.

Ninth. Mr. Toro Rios agrees to give to Mr. Viso a third part of *of* all the seed cut during the next crop.

Tenth. The lessee shall pay all the taxes charged upon that part

of the property leased, in the proportional part to the number of cuerdas leased.

9 Tenth. It is expressly agreed by both parties that this contract may be recorded at the request of either of them in the Registry of Property of the District.

I gave to the parties hereto the legal advices necessary and having read to each of them the present deed they execute, ratify and approve it inasmuch as regards them before the witnesses B. B. Llenza and Rafael Guzmán, of legal age, of this city and without legal impediment as such as they state, all sign before me the Notary, all the contents of this public instrument, I certify.—(signed and sealed) Bautista Viso Lorenzo.—José Toro Ríos.—B. B. Llenza.—Rafael Guzman.—(signed) Herminio Diaz.

A true first copy of the original under the number indicated on file in my current notarial protocol. In witness whereof and at the request of Mr. Bautista Viso, I certify this present copy on two sheets of paper attaching the corresponding internal revenue stamp of fifty cents in San Juan, Porto Rico, on the third day of January, nineteen hundred and six.

(S'g'd)

[Seal and Stamp.]

HERMINIO DIAZ,

Lawyer & Notary.

This document was recorded in volume twenty (20) of Humacao at folio one hundred and forty seven (147), parcel nine hundred and forty six (946), fourth inscription, Humacao, August 31st, 1907.

JOSÉ M. CUADRA.

I certify that to this document there have been attached and cancelled as taxes seven internal revenue stamps, one of five dollars, one of one dollar, Nos. 636035 & 636588 and five fifty cents stamps, in accordance with articles 1 & 5 of the tariff and Art. 356 of the Political Code.

[SEAL.]

(Stamps.)

CUADRA,

Registrar of Property.

10 Notarial Office established on March 1st, 1901. Herminio Diaz, Lawyer & Notary Public. Copy of Public Instrument No. 92. Executed by Mrs. Petronila del Carmen Ríos y Berriós and Mr. Bautista Viso y Lorenzo. Lease of Rustic Property. On December 21, 1905. San Juan, Pto. Rico.

Copy. Corrected. Number Ninety Two.

In the City of Humacao, Porto Rico, on the twenty-first day of December, nineteen hundred and five, before me, Herminio Diaz Vavarro, Counsellor at Law and Notary Public, with residence and open office in the capital of the island, San Justo Street number twelve, appear:

Mrs. Petronila del Carmen Ríos y Berrios, of legal age, widow, property owner and resident of this city, represented by Mr. José Toro Ríos of legal age, married, property owner and resident of this city, which power of attorney he offers to substantiate in the most solemn form as often as may be required; and

Mr. Bautista Viso y Lorenzo, of legal age, widower, farmer, property owner and resident of San Lorenzo.

I am acquainted with the parties hereto and they assure me that they have and having in my opinion the legal capacity necessary, they state:

First. That Mrs. Petronila del Carmen Ríos y Berrios is the owner in fee simple of a rustic property called *Pasto Viejo*, situated in the ward of *Antón Ruiz* of this municipal jurisdiction, consisting of five hundred and sixteen (516) and thirty six (36) hundredths cuerdas, equivalent to two hundred and eleven hectares, nine areas and thirty three centiares, bounded on the North by lands of the estate of Mrs. *Avelino Ríos*, on the East by the estate of Mr. *Antonio J. Cuadra* and Mr. *José C. Bajandas* and the estate *Tinajero*; on the South by the lands of *Avelino C. Peña*; farm *Quintana*, estate of *Mauricio Peña*, the road leading to the *Playa* and the lands of *José Toro Ríos*; and on the West by other lands of the estates of Mr.

11 José A. de la Torre, and Mr. *Mauricio Peña* and lands heretofore of *Noya y Hernandez*, at present of *José Rodríguez de las Allas*, which property Mrs. *Ríos y Berrios* acquired by the joining of others as appears from the deed executed before the notary of this city Mr. *Antonio de Aldrey* on the thirteenth of November, eighteen hundred and ninety nine, recorded in the Registry of Property for the District at folio one hundred and eighty three of volume seventeen of *Humacao*, parcel number eight hundred and ten, first inscription.

Second. That in accordance with the agreement heretofore made Mrs. *Ríos y Berrios* leases to the other party hereto Mr. *Viso y Lorenzo*, to himself, his successors and heirs a part of the foregoing property consisting of one hundred cuerdas, bounded on the North by a property heretofore belonging to *José M. Cuadra* from which it is separated by a ditch; on the south by part of the road which leads to the factory of the *Humacao Sugar Company*, on the West by the straight line which leads from this road and ends on the North boundary and on the East by other lands of the principal strip, the said property being crossed from East to West by a railroad belonging to the *Humacao Sugar Company*, and the river *Antón Ruiz*.

Third. That the term of the lease mentioned in the foregoing clause shall be for six consecutive crops terminating on the thirtieth of January nineteen hundred and twelve.

Fourth. That the lessee Mr. *Viso y Lorenzo*, in addition to one dollar, the consideration of this contract, shall pay as rental, ten dollars annually for each cuerda, payable at the end of every six months, reserving to Mr. *Viso* the right to make the payment in advance in which case the lessor shall credit him with interest at the rate of eight per cent annually.

Fifth. All the improvements which may be made by Mr. *Viso y Lorenzo* on the property leased whether of construction buildings or anything whatsoever shall remain for the benefit thereof
12 without the lessee having the right to claim any payment whatsoever for the same.

Sixth. Mr. *Toro Ríos* in the name of his principal Mrs. *Ríos y Berrios*, agrees that all the canes which the lessee plants on the leased property shall be ground in the factory of the *Humacao Sugar Company*

for which purpose he agrees to facilitate for the transportation of the said canes, not only any railway and railway cars belonging to the said factory, but also a kilometer of portable track; it being understood that the placing of the same and the return of the movable track shall be for the account of the lessee and the same shall be made as soon as he has finished using it. In the same manner Mr. Toro Rios in the name of his principal agrees that the Humacao Sugar Company shall pay to Mr. Viso for his canes an amount in sugar equal to that paid to the most favored planter.

Seventh. It is an essential and indispensable condition and primary basis of the present contract, that the leased lands shall be planted with cane and that the same shall be ground in the Humacao Sugar Company, Mr. Viso agreeing to load with the same the portable cars and to bring them to the railroad as well as to cut canes of not less than twelve months old.

Eighth. Mr. Toro Rios in the name of Mrs. Rios y Berríos, in the same manner agrees to give to the lessee Mr. Viso a third part of all the cane seed which the said Mr. Toro Ríos may cut during the next crop.

Ninth. It is understood that the lessee Mr. Viso shall pay the taxes imposed on the part of the property leased in proportion to the number of cuerdas of which it consists.

Tenth. It is agreed by the parties hereto that at the request of any of them without the consent of the other, that the present contract shall be recorded in the Registry of Property.

13 I gave to the parties hereto the proper legal instructions and each of them having read the present deed, they execute, ratify and approve the same before the witnesses B. B. Llenza and Rafael Guzmán, of legal age, of this city and without legal impediment as such as they state and all sign before me the Notary of all of which as stated in this document I certify.—Bautista Viso Lorenzo.—José Toro Rios.—B. B. Llenza.—Rafael Guzman.—(signed) Herminio Diaz.

A true first copy of the original which under the number indicated is on file in the current protocol of this notarial office. In witness whereof at the request of Mr. Bautista Viso Lorenzo, I certify these presents on two sheets of my paper adjoining the corresponding internal revenue stamp of fifty cents on the third of January, nineteen hundred and six.

(S'g'd)

HERMINIO DIAZ,
Lawyer & Notary Public.

This document was recorded in volume seventeen (17) of Humacao at folio one hundred and eighty five (185), parcel eight hundred and ten (810), third inscription. Humacao, August 31st, 1907.

JOSÉ M. CUADRA.

I certify that to this document there have been attached and cancelled as taxes, five internal revenue stamp-, one of five dollars and one of three Nos. 63,345, 105,884, and three fifty cents stamps,

in accordance with art. one and five of the tariff and Art. 356 of the Political Code.

CUADRA, *Registrar.*

14

No. 68.

Deed of Grinding contract. Executed by The Humacao Sugar Co. represented by its Manager Mr. Prudencio Eugi y Barriola, in favor of Bautista Viso Lorenzo. On May the 11th, 1907. Before Antonio de Aldrey Montolio. Notary of Humacao, Porto Rico.

Number Sixty Eight. Grinding Contract.

In the City of Humacao, Headquarters for the Notarial District, on the Eleventh Day of May, Nineteen Hundred and Seven, Before me, Antonio de Aldrey y Montolio, Notary Public for the Island of Porto Rico with Residence and Open Office in this City and the Witnesses Hereinafter Mentioned, Appear:

1. Mr. Prudencio Eugi y Barriola, bachelor, property owner, thirty years of age and resident of this city.

2. Mr. Bautista Viso y Lorenzo, widower, property owner, forty five years of age, of San Lorenzo and residing in Humacao.

The second appears in this transaction in his own right and the first as Manager of the corporation Humacao Sugar Company which representation he will prove as he states, as often as may be necessary.

I the Notary certify to my acquaintance with, the professions and residence of the parties hereto, as well as their age and civil state according to their statements, they assuring me to be in the full enjoyment of their civil rights, without my knowing anything to the contrary, and having in my opinion the legal capacity necessary for the execution of this present deed for the grinding of cane, they state as follows:

First. That Mr. Bautista Viso has leased from Florencio Berrios a rustic property in the ward of Anton Ruiz, in this municipal jurisdiction, on which he plants cane, as appears from a deed executed in this city on the seventeenth day of November last before the Counsellor at Law and Notary Mr. Juan F. Vias Ochoteco.

Second. The parties hereto have agreed upon the grinding of the said canes since the fifteenth of March last in the manner hereinafter mentioned and for the purpose that this agreement shall be made in a public document, they execute the present deed in the manner set forth in the following clauses:

First. Mr. Prudencio Eugui, as manager in and for the corporation Humacao Sugar Company agrees and undertakes that all the canes which Mr. Bautista Viso may plant on the property he has leased from Florencio Berrios be ground in this factory and which have been mentioned at the beginning of this deed.

Second. The conditions covering the said grinding are exactly the same as those which the said Mr. Viso has agreed upon in other deeds executed before the Notary Mr. Herminio Diaz and before me

on the twenty first of March last, of lease from Petronila del Carmen Rios y Berrios and José Toro Rios, which the party of the first part states that he is perfectly acquainted with.

Third. It is expressly agreed that the party failing in the fulfilment of this contract shall be obliged to pay indemnization for the damages and costs which may be suffered as well as the fees of the Attorney which he may have to use in his defence.

Fourth. The parties hereto agree that the provisions of this contract are dated back to the fifteenth of March last and until Mr. Viso has leased the property of Florencio Berrios; and that the private contract signed on the said date be affixed hereunto to be inserted in the copies which may be made thereof.

Such is the document which the parties hereto execute and accept in all its parts and agree to keep, complete and execute in the most solemn legal form.

Thus they execute and sign together with the witnesses present residents, of legal age and without legal impediment as such, whom I certify to know personally Juan C. Medrano and Angel Montalvo, after they had all read this document, of which right I informed them, all of which I certify. At this time and before the

16 parties signed the following explanation is made. That in case the Humacao Sugar Company shall become the property of any other company or become into the possession of any other successor, the present contract shall be respected in all its parts. All of this they stated and ratify, sign with the witnesses which I certify.—Humacao Sugar Co.—by Prudencio Eugui, Treasurer.—Bautista Viso.—Juan C. Medrano.—Angel Montalvo.—Signed Antonio de Aldrey.—Not.

Duplicate.

In the central Pasto Viejo of the municipal jurisdiction of Humacao, on the fifteenth of March, nineteen hundred and seven, appear: as party of the first part Mr. Prudencio Eugui, of legal age, bachelor, resident of Humacao, as representative of the Humacao Sugar Co. and, of the second part, Bautista Viso Lorenzo, of legal age, widower, of San Lorenzo, residing in Humacao; and both persons mutually had agree- and agree in the presence of the witnesses who appear and sign hereinafter the following contract: First. Mr. Prudencio Eugui, as manager and representative of the Humacao Sugar Co. agrees to grind in the said fa-tory that he represents all the cane which Mr. Viso will plant on the lands he has leased from Mr. Berrios, according to the deed of the seventeenth of October, nineteen hundred and six executed before the Notary Vias Ochoteco of Humacao; during the term of the lease, on the same conditions as he has agreed in his deeds of lease of the other lands leased by him from José Toro Rios and Doña Petronila Rios according to deed executed before the Notaries Herminio Diaz Navarro and A. Aldrey. Second. It is agreed by both parties that this extrajudicial contract shall have the same force and value as if it were a public instrument, the party failing to keep the same shall respond for such failure to comply. Third. It is also agreed to change this

to a public instrument at such time as either of the parties may petition and as well to record the same in the Registry of Property.

Fourth. That the party hereto who fails to comply with this agreement, shall be obliged to indemnify for the damages caused by reason thereof. Fifth. That this agreement being by mutual accord they sign it in the most solemn manner. Bautista Viso.—Humacao Sugar Company by Prudencio Eugui, Treasurer.—José Gonzalez Prida.—S. Rocafort.—Arturo R. Borges.

A true and faithful copy of the contents of the original on file on my general current protocol to which I refer. In witness whereof and at the request of Mr. Bautista Viso, I execute this present first copy which I sign and seal and flourish on three sheets of my notarial paper, affixing hereafter a fifty cents stamp in accordance with the notarial law and noting the making of this copy in Humacao, Porto Rico, on the twenty second day of May, nineteen hundred and seven.

[SEAL.]

(S'g'd)

ANTONIO DE ALDREY.

(Stamp.)

18 Notarial College of Porto Rico. District of Humacao.—Antonio de Aldrey Montolio. Notary of Humacao. No. 38. Deed of Lease. Executed by Mr. Bartolomé Flaquer y Marciano, as Attorney in fact of the Spouse Mr. José Toro-Ríos and Mrs. Lucía Guzmán y Toro, in favor of Mr. Bautista Viso Lorenzo. Humacao, P. R. March the 21st, 1909. Before Antonio de Aldrey y Montolio, Notary of Humacao. Number Thirty Eight. Lease.

In the city of Humacao, Headquarters for the notarial district, on the twenty first of March, nineteen hundred and seven, before me, Antonio de Aldrey y Montolio, Notary public for the island of Porto Rico with residence and open office in the city and the witnesses hereinafter mentioned, appear:

1. Bartolomé Flaquer y Marciano, married, property owner, forty years of age and resident of this city;

2. Bautista Viso Lorenzo, widower, property owner, forty five years of age, of San Lorenzo, residing in this city.

The second appears herein in his own right and the first as Attorney in fact of the legitimate spouses José Toro Ríos and Lucía Guzmán y Toro, property owners, of legal age and residents of this city, as appears from the deed executed before me in this city and which representation he agrees to prove as often as may be necessary.

I the Notary certify as to my acquaintance with, the profession and residences of the parties hereunto as well as their age and civil state in accordance with their statements, and they assuring to me to be in full enjoyment of their civil rights without anything to the contrary appearing to me and having in my judgment the legal capacity necessary for the execution of the present deed of lease, they make the following statements:

First. That the principals of the party of the first part, Mrs. Toro and Guzman, as represented by their attorney in fact, Bartolomé Flaquer, own the following property: Rustic property:

19 A parcel consisting of two hundred cuerdas, level lands, high land, hills and swamps, equal to seventy eight hectares,

seventy areas and nine centiares, situated in the ward of Anton Ruiz of this municipal jurisdiction, bounded on the North by Petronila del Carmen Rios y Berrios, and the estate of Atanasio J. Cuadra; on the South by other property of the estate of Ramón Tinajero; on the East with the property of the estates of Atanasio J. Cuadra, Mrs. Dolores Quiñonez and Mr. Francisco Virella; and on the West by Petronila del Carmen Ríos y Berrios. There is on this property, forming an integral part thereof, a two stories wooden house roofed with clay tiles and galvanized iron, resting upon masonry pillars and wooden up-rights, measuring 9:50 meters frontage by 11:50 meters in depth, with an extension of 9:50 meters long by 3:40 meters wide, with masonry steps on front covered with cement and a masonry cistern with a watering trough for cattle, covered with cement with its cover supported on masonry pillars. The spouses Toro y Guzman also possess a strip of land at the South of the described property, which belongs to the farm Pasto Viejo and reaches to the river and another portion abutting upon the first described property, that of the estate Tinajero, farm Quintana of Mr. Ramón Pou and drains of Pasto Viejo.

Second. That the first described property was acquired by them by purchase from José Gumersindo and Felix Valois Román Bajandas y Mulers, without they being able at this moment to say how they acquired the same nor the record in the Registry of Property, assuring that it is recorded.

Third. That the said described property, according to the statement of the party of the first part, is free and clear of all encumbrances.

Fourth. That he has agreed upon with the party of the second part the lease of the property aforesaid and the two parcels mentioned for the term, rental and conditions hereinafter stated.

20 Therefore, they fulfill the agreement made and execute the present deed in the manner set in the following clauses:

First. Mr. Bartolomé Flaquer y Marcano, as attorney in fact in and for the spouses José Toro Rios and Lucia Guzman y Toro gives in lease to Mr. Bautista Viso Lorenzo, not only the rustic property which origin and other date are stated in the beginning of this document, and also the two parcels mentioned and he may use the said properties to plant canes and for pasture.

Second. The rate of rental of the present deed is the sum of one thousand five hundred dollars annually, payable at the end of each six months, that is to say at the rate of seven hundred and fifty dollars each six months and payable at the residence of the lessors or the legitimate representative, without any excuse or pretext whatsoever.

Third. The term of the present lease is that of five crops or zafras counting from the thirty first of December last to which date the parties hereto date back the effect of the present deed, and shall terminate at the end of the crop of nineteen hundred and twelve.

Fourth. All the taxes which are or may be assessed upon the property, the subject-matter of the present deed, and during the term of the present contract, shall be paid by Mr. Viso.

Fifth. It is agreed that all the improvements made by Mr. Viso y Lorenzo on the property herein treated of, may be removed by him at the end of this contract.

Sixth. The lessor reserves the right to cross the property, the subject-matter of this contract, with the tracks actually constructed thereon as well as that of cutting fire wood either for themselves or for third parties.

Seventh. The lessee shall not establish any easement whatsoever upon the property herein treated of without express consent of the lessor.

21 Eighth. Bartolomé Flaquer y Marcano in accordance with the instructions he has received, agrees and undertakes that all the canes which the lessee Mr. Viso plants in the property leased on account of which it is agreed and undertaken that Mr. Bautista Viso will be furnished with, for the transportation of the said canes, not only any railway and railway cars which may belong to the said factory, but also a half kilometer of portable track, it being understood that the lessee shall place the same and return the said portable track at his own expense and that the return thereof shall be made as soon as he has finished using the same.

Ninth. In the same manner the Attorney in fact of the lessors agrees that the Humacao Sugar Company shall pay to Mr. Viso y Lorenzo, for his canes a sum in sugar equal to that paid to the most favored colono.

Tenth. The parties hereto agree that this document can be recorded in the Registry of Property and that either of the parties hereto may petition the same whenever he may deem it property, and they design mutually this city for the fulfillment of this contract.

I the Notary did not give any advice to the parties hereto since they stated that they were perfectly informed, notwithstanding this. I explained them to them.

Such is the document which the parties hereunto in the representation in which they appear accepts in all its parts and agree to keep, complete and execute the same in the most solemn legal form.

Thus they state, execute and sign, together with the witnesses present, residents, of legal age, and without impediment as such, whom I certify I know personally, Antonio Noya and Demetrio Carmona after they have all read this document in use of the right which I informed them all of which I certify.—José Toro Ríos and Lucía Guzmán de Toro, by Bartolomé Flaquer.—Bautista Viso y Lorenzo.—Antonio Noya.—Demetrio Carmona.—signed—Antonio de Aldrey. Not.

22 A true and faithful copy of the contents of the original on file in my current general protocol of public instruments, to which I refer. In witness whereof and at the request of the lessee, I certify this present first copy which I sign, seal and flourish on two sheets of my notarial paper, affixing hereafter a fifty cents stamp in accordance with the notarial law and anoting the making of the same in Humacao, Porto Rico, on the twenty-third day of March, nineteen hundred and seven.

(S'g'd)

ANTONIO DE ALDREY, *Not.*

This document was recorded in volume twenty one (21) of Humacao at folio one hundred and sixty (160) over, parcel number seven hundred and forty-six (746) triplicated, twelfth inscription. Humacao, November thirty, nineteen hundred and seven.

JOSÉ M. CUADRA.

Attached five stamps, one of five dollars, one of three, one of one dollar and two of fifty cents, in accordance with article- 1 and 5 of tariff and Art. 456 of the Political Code. Humacao, November 30, 1907.

23 Notarial College of Porto Rico, District of Humacao. Antonio de Aldrey y Montolio, Notary of Humacao. No. 37. Deed of lease. Executed by Mrs. Petronila del Carmen Ríos y Berrios, in favor of Mr. Bautista Viso y Lorenzo. Humacao, P. R. March the 21st, 1907. Before Antonio de Aldrey, Notary of Humacao.

Number Thirty-Seven.

Lease.

In the City of Humacao, Headquarters for the Notarial District, on the twenty first day of March, nineteen hundred and seven, before me, Antonio de Aldrey y Montolio, Notary public for the island of Porto Rico, with residence and open office in this city, and the witnesses hereinafter mentioned, appeared.

1. Mrs. Petronila del Carmen Ríos y Berrios, widow, property owner, fifty four years of age and resident of this city; and

2. Mr. Bautista Viso y Lorenzo, widower, property owner, forty five years of age, of San Lorenzo, residing in this city.

I the Notary certify to my acquaintance with, the profession and residence of the parties hereunto as well as their age and state of civil life, in accordance with their statements, they assuring me that they are in the full enjoyment of their civil rights, without anything to the contrary being known to me and having in my opinion the legal capacity necessary for the execution of the present deed of lease, they make the following statements:

First. That the party of the first part is the owner in fee simple of the following property:

Rustic property: A parcel called "Pasto Viejo", situated in the ward of Anton Ruiz of this municipal jurisdiction, consisting of five hundred and sixteen and thirty six hundredths cuerdas, equivalent to two hundred and eleven hectares, nine areas and thirty

24 three centiares, bounded on the North by the lands of the estate of Mrs. Avelina Ríos, on the East by the estate of Atanasio J. Cuadra, Mr. José C. Bajandas y Tinajero; on the South by Avelino C. Peña, the farm "Quintana" of Mr. Ramón Pou y Ríos, the estate of Mauricio Peña, the road leading to the Playa of this city and José Toro Ríos; and on the West by the estate of José Agustín de la Torre, Mr. Mauricio Peña and the lands of Mr. José Rodríguez de las Albas, to day Mrs. Maria Rodriguez de Bustelo.

Second. That the said property is formed by the joining of various parcels as is seen in the deed executed before me in this city in the thirteenth day of November, eighteen hundred and ninety nine, and recorded in the Registry of Property of this District in volume seventeen of Humacao, folio one hundred and eighty three, parcel number eight hundred and ten, first inscription.

Third. That according to the statement of the party of the first part the said rustic property is free and clear of all encumbrances.

Fourth. That she has agreed upon with the party of the second part the lease of a parcel of land which must be segregated to form a new parcel from the principal strip, which for the purposes of this contract, is described as follows: Rustic Property: A parcel known by the name of "Pasto Viejo", situated in the ward of Anton Ruiz of this municipal jurisdiction, consisting of two hundred and six cuerdas of land, equivalent to eighty hectares, ninety six areas and seventy two centiares, bounded on the North by Alfonso Faura and the property "El Hiaco" of José Toro Ríos, on the South by the principal strip whence it is segregated, on the east by the property "El Hicaco" of José Toro Ríos and the property "Bajandas" of the said Toro Ríos; and on the West by Mrs. Maria Rodríguez de Bustelo; which lease is agreed for the term, consideration and conditions hereinafter mentioned.

Therefore, they make the agreement decided upon and execute the present deed, on the manner explained in the following clauses:

First. Mrs. Petronila del Carmen Ríos y Berrios, grants and leases to Bautista Viso y Lorenzo, the rustic property as segregated, the origin of which, area and other data are expressed in the beginning of this present deed, and which can be used for pasture and cane.

Second. The rental of the present deed is the sum of Two Thousand and Sixty Dollars per year or at the rate of ten dollars per cuerda payable at the end of each six months, that is to say one thousand and thirty dollars semi annually at the residence of the lessor or her legal representative.

Third. The term of the present contract is that of six crops or zafras beginning from January nineteen hundred and six to which date the parties hereunto date back the provisions of this deed and shall terminate at the end of the crop for the year nineteen hundred and twelve.

Fourth. All taxes which are or may be assessed upon the property herein leased and during the term of the present contract, shall be paid by Mr. Viso.

Fifth. It is agreed that all improvements made by Mr. Viso Lorenzo in the property treated of shall be removed by him upon the completion of the present contract.

Sixth. The lessee Mr. Bautista Viso agrees and undertakes to respect the railway at present on the property treated of herein as they are actually built, agreeing on his part not to establish upon the said property any easement whatsoever.

Seventh. The parties hereunto execute reciprocally and in the most solemn legal manner the most complete and adequate release for all the business and transactions which they may have had up to the thirty-first of December nineteen hundred and six and

which may refer also to the purchase of the second crop cane and lands cultivated to planting time, rentals and taxes to the aforesaid date and in virtue thereof they agree and undertake not to make any claim at any time as regards these matters.

Eighth. Mrs. Petronila del Carmen Rios y Berrios agrees and undertakes that all the canes which the lessee Mr. Viso plants upon the property leased shall be ground in the factory of the Humacao Sugar Company for which she agrees and binds herself that Mr. Bautista Viso will be furnished for the transportation of said cane not only any railway line and railway cars which may belong to the said factory but also a kilometer of portable track, it being understood that the placing and return of the said portable line shall be for the account of the lessee and he shall make return thereof as soon as he shall have finished using the same.

Ninth. The lessor Mrs. Rios y Berrios also agrees that the Humacao Sugar Company shall pay to Mr. Viso a sum for his sugar equal to that paid to the best favored planter.

Tenth. The parties hereto agree that the recording of this document in the Registry of Property of this District can be made at the request of either party when they deem it proper and they mutually agree upon this city for all the matters and transactions arising from the fulfilment of this contract.

I the Notary did not give to the parties hereto any legal advices as they stated that they were perfectly acquainted with them notwithstanding that I explained them to them.

Such is the document which the parties hereto make and
27 accept in all its parts and binds themselves to keep, carry out and execute in the most solemn legal form.

Thus they state, execute and sign together with the witnesses residents, of legal age and without legal impediment as such, whom I certify to know personally Mr. Antonio Noya and Mr. Demetrio Carmona, after having read to all of them this document, they having refused this right themselves of which I informed them, of all of which I certify.—Petra Rios Ida. de Toro.—Bautista Viso Lorenzo.—Antonio Noya.—Demetrio Carmona.—(signed) Antonio de Aldrey.
Not.

A true and faithful copy of the contents of the original on file on my general current protocol of public instruments to which I refer. In witness thereof and at the request of the lessee, I certify the present first copy which I sign and seal and flourish on two sheets of my notarial paper affixing furthermore a fifty cents stamp as provided for by the notarial law and noting the making thereof in Humacao, (Porto Rico) on the twenty-third day of March, nineteen hundred and seven. Between the lines "issued for pasture and cane" valid. I certify.

(Sgd.)

ANTONIO DE ALDREY.

This document was recorded in volume twenty-three of Humacao at folio fifty eight, parcel one thousand and fifteen (1015) first inscription. Humacao, August thirty-first, nineteen hundred and seven.

JOSÉ M. CUADRA.

I certify that to this document there have been affixed and cancelled as taxes, six internal revenue stamps, one of ten dollars, one of three dollars Nos. 128,097, 105,582 and four fifty cents stamps in accordance with clauses one and five of the tariff and Art. 156 of the Political Code.

[Stamps.]

CUDRA, Registrar.

28

Demurrer to Complaint.

(Filed February 25, 1909.)

610. Law.

BAUTISTA VISO LORENZO, Plaintiff,

vs.

THE PORTO RICO SUGAR Co., Defendant.

The defendant herein demurs to the complaint of the plaintiff and for the ground of its demurrer alleges:

I.

That the complaint is uncertain, unintelligible and ambiguous in that it states in paragraph sixth thereof: "That plaintiff was ready to deliver said canes to the defendant company during the said months of January to June of the said year 1908, but that the defendant company disregarding the terms and conditions of said contracts did fail and refuse to grind a great portion of said canes", and in paragraph six of said complaint it states as follows: "That defendant company did not grind all of the said canes which it was able to handle of those belonging to plaintiff during the said months of January to June 1908, but continued grinding said cane for several months after said month of June"; which two statements of the complaint are contradictory to each other and make said complaint unintelligible and ambiguous.

2.

That the complaint is uncertain in that — paragraph Eight thereof is stated a contract between two parties which are not parties to this suit, to wit: The Humacao Sugar Company and Petronila del Carmen Rios y Rios with one José Toro Rios, as a cause of action against the defendant herein and neither the contract itself nor its terms are set out or specified in the said complaint.

29

Wherefore the defendants herein prays judgment against the plaintiff and that the complaint be dismissed with costs.

C. M. BOERMAN,
Attorney for Defendant.

Received copy of above demurrer this 25th day of February, A. D. 1909.

HENRY F. HORD.

Motion for a Bill of Particulars.

(Filed May 7, 1909.)

No. 610. Law.

BAUTISTA VISO LORENZO
vs.
THE PORTO RICO SUGAR CO.

Now comes the defendant herein and moves this Honorable Court for an order on the Plaintiff herein Bautista Viso Lorenzo to furnish defendant a Bill of Particulars as follows:

1st. Dates and names of parties to the contracts mentioned in paragraphs II, III, IV and V of the complaint.

2nd. Dates of the contracts mentioned in Paragraphs VIII and IX of the said complaint.

3rd. Amount of cane which the Plaintiff pretends was ground after the time by Plaintiff pretended to have been contracted for.

4th. Number of cars which the plaintiff claims that the defendant has failed to provide for the handling of the canes according to the pretended contracts.

All of which particulars are indispensable and necessary for the defendant in order to answer said complaint.

C. M. BOERMAN,
Attorney for the Defendant Company.

30 To Bautista Viso Lorenzo, or to the Attorney of Record:

You are hereby notified that a motion for a Bill of Particulars, a copy of which is hereto attached, will be presented before the Honorable Bernard S. Rodey, judge of this Court, at the Court-house at San Juan, P. R. on the — day of —, 1909, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard.

Journal Entry.

May 7, 1909.

610. Law.

BAUTISTA VISO LORENZO
vs.
THE PORTO RICO SUGAR COMPANY.

This cause comes on to be heard upon the demurrer to the complaint, and upon the motion of the defendant for a bill of particulars, Messrs. Aponte and Hord appearing for the plaintiff, and Chas. M. Boerman for the defendant. The Court having heard the arguments pro and con, overrules said demurrer, and as to the

bill of particulars simply requires that plaintiff shall within five days file all of the contracts mentioned in the complaint. Defendant is required to thereafter plead or answer so that the cause can be called on the 18th instant and be set down for trial.

Demurrer to the Complaint.

(Filed May 18, 1909.)

610. Law.

BAUTISTA VISO LORENZO

vs.

THE PORTO RICO SUGAR COMPANY.

Violation of Contract.

The defendant herein demurs to the complaint and as ground for said demurrer alleges that the allegations of the complaint do not constitute a cause of action against this defendant.

31

C. M. BOERMAN,

Attorney for the Defendant Company.

Answer to the Complaint.

(Filed May 18, 1909.)

BAUTISTA VISO LORENZO

vs.

THE PORTO RICO SUGAR CO.

The defendant herein, the Porto Rico Sugar Company, answering the complaint of the plaintiff alleges:

I.

The defendant Company specifically denies that part of paragraph III of the complaint which states that "the defendant- herein were by said contracts obligated to grind during the months of January to June of said year 1908".

II.

The defendant Company specifically denies that part of paragraph IV of the complaint which states: "that the defendant Company disregarding the terms of the conditions of said contracts did fail and refuse to grind a great portion of said canes and therefore caused a heavy loss to plaintiff during said year 1908 and for the succeeding years of said crop aggregating many thousands of dollars."

III.

The defendant Company denies all the allegations contained in paragraph V of said complaint.

IV.

The defendant Company denies the allegation of paragraph VI of the complaint that the defendant Company did not grind all of the said canes which it was able to handle of those belonging to plaintiff during said months from January to June, 1908". And the defendant further denies the allegation of the said paragraph that the canes ground after the month of June were reduced in value and in production of sugar, by any act or omission of the defendant.

V.

The defendant denies all the allegations of paragraph VII of the complaint.

VI.

The defendant Company denies that part of paragraph IX of the complaint which says "that defendant Company has wholly failed and refused to carry out its part of said contracts and has failed and refused to grind a large part of said canes and did not supply the necessary means of transportation for the same and delayed the grinding of said portions of said cane as it received until long after June, 1908." And it also denies that the said canes had greatly depreciated in use and productive value through any act or omission of the defendant Company and to the amount stated in said paragraph. Also that part referring to attorney's fees.

VII.

The Defendant Company avers that it has complied reasonably and in every respect with said five contracts attached as a bill of particulars to the complaint.

Wherefore the defendant prays for judgment dismissing the complaint with costs.

C. M. BOERMAN,

Attorney for Defendant Company.

Luis Rubert under oath says: That he is Vice-President of the Porto Rico Sugar Company, the above named defendant, and that he is well acquainted with the facts of this case. That the allegations of the foregoing answer are true to his own knowledge, except as to those stated on information and belief and as to those he believes it to be true.

33

PUERTO RICO SUGAR COMPANY.
LUIS RUBERT, *Vice President.*

Sworn and subscribed to before me this 17th of May, 1909.

J. DE LA TORRE,

[NOTARIAL SEAL.]

Notary Public.

Journal Entry.

May 29, 1909.

610. Law.

BAUTISTA VISO LORENZO
vs.
THE PORTO RICO SUGAR COMPANY.

Upon motion of Henry F. Hord, counsel for the plaintiff, counsel for defendant being present and not objecting, he is granted permission to amend by interlineation the complaint by changing the amount sued for from twenty-three thousand dollars to thirty thousand dollars.

Exceptions to the Court's Order Allowing Amendment to Complaint.

(Filed June 1, 1909.)

No. 610.

BAUTISTA VISO LORENZO
vs.
THE PORTO RICO SUGAR CO.

The defendant Company hereby excepts to the order of the Court allowing an amendment to the complaint increasing the amount of damages to \$30,000.

C. M. BOERMAN,
Attorney for Defendant Company.

34

Journal Entry.

June 1, 1909.

610. Law.

BAUTISTA VISO LORENZO
vs.
PORTO RICO SUGAR COMPANY.

This cause comes on for trial on this date, but before proceeding with the main case the Court hears argument of counsel on the demurrer to the complaint filed herein under date of May the 18th ultimo, C. M. Boerman appearing for the demurrer and Henry F. Hord against the same. And at the end thereof the Court, being fully advised, overrules the same, to which action of the Court the defendant by its attorney then and there duly objects and excepts.

Thereupon counsel for the defendant moves and is granted leave to amend his answer by interlineation by adding to paragraph No. 6 of said answer the words "also that part referring to attorney's fees". And the main cause being proceeded with, thereupon comes a jury as follows: William de Chabert, Manuel Ruiz, Rufino Goe-naga, Nathaniel Tyler, Hugo Stern, Casimiro Peraza, J. A. Mac-Donald, Samuel Lerwold, Alexis C. Estornel, Geo. E. C. Dunham, John Bitter, and José R. Benitez, twelve good and lawful men chosen from the body of the District of Porto Rico, and duly sworn, and impaneled to try the issues joined between the parties. Whereupon the witnesses for both sides are called and duly sworn and placed under the exclusion rule, and the trial is proceeded with, and not being finished at the adjournment hour, the further hearing of same is continued over until tomorrow morning, the jury being permitted to separate in the meantime under proper instructions from the Court.

35

Stipulation.

(Filed June 2, 1909.)

BAUTISTA VISO LORENZO

vs.

THE PORTO RICO SUGAR COMPANY.

Stipulation.

And now on this second day of June, 1909, the trial of this cause having already proceeded for one full day before a jury and it appearing that one of the jurors, Nathaniel Tyler, is ill and unable to proceed with the trial, counsel for the respective parties, in order that a mistrial shall not result, hereby stipulate that the said juror may be, and hereby is excused from the cause; and they further stipulate that the trial may proceed and eleven jurors may render a verdict therein as fully to all intents and purposes as if the full twelve should render the same.

(Signed)

HENRY F. HORD,
ARTURO APONTE, JR.,
Att'ys for Plaintiff.

(Signed)

C. M. BOERMAN,
Attorney for Defendant..

Journal Entry.

June 2, 1909.

Law.

BAUTISTA VISO LORENZO

vs.

THE PORTO RICO SUGAR CO.

Now come the parties together with their counsel as on yesterday. The jury is called and all answer present. And it appearing that

one of the jurors, Mr. Nathaniel P. Tyler, is ill and unable to proceed with the trial, counsel for the respective parties thereupon
 36 file a stipulation in which it is agreed that the said juror may be excused from the cause, and that the trial may proceed, and that eleven jurors may render a verdict therein as fully to all intent and purposes as if the full twelve should render the same. Whereupon various exhibits are introduced and the taking of testimony is proceeded with, and at the end thereof counsel for the respective parties address the jury, the Court delivers its instructions to them, and they retire in the custody of the Marshal to consider of their verdict.

Journal Entry.

June 3, 1909.

610. Law.

BAUTISTA VISO LORENZO
 vs.
 THE PORTO RICO SUGAR CO.

And now again comes the jury in the above-entitled cause, after having been out since yesterday at five o'clock P. M. in charge of the Marshal considering of their verdict, and after being duly called and all found present return into the court the following verdict, that is to say:

"We, the jury, find for the plaintiff and assess his damages at the sum of \$15,000.00.

JOHN A. MACDONALD, *Foreman.*"

The Court thereupon asks the jury if this is their verdict, to which they all respond that it is. Whereupon it is ordered that the verdict be filed and recorded, and the jury is discharged from the further consideration of the cause. The judgment on the verdict will be hereafter duly entered.

Motion for New Trial.

(Filed June 4, 1909.)

BAUTISTA VISO LORENZO
 vs.
 THE PORTO RICO SUGAR CO.

37 Now comes the defendant and moves this honorable Court for a new trial of the above entitled cause and to set aside the verdict, basing its motion upon the following grounds:

First. That the verdict is contrary to the law and the evidence.

Second. That the damages assessed by the said verdict are excessive.

Third. That one of the exhibits was given to the jury in a language which was not understood by all of the jurors, to wit, in the Spanish language without a translation into English. Therefore it could not have been properly appreciated by them. That the said exhibit during the trial was admitted against the objection of the defendant Company and solely upon the condition that it would be translated, and, nevertheless, it was given to the jury without a translation thereof. The exhibit referred to consists of the Notarial requirement of the defendant Company to pay damages to the plaintiff and the defendant's answer to such requirement, and only part of it was orally translated in address to the jury.

Fourth. For the refusal of the Court to give instructions to the jury as requested by the defendant on the law applicable to the case, which it ought to have given to them.

(Signed)

C. M. BOERMAN,
Attorney for the Defendant Company.

San Juan, P. R., June 4, 1909.

38

Journal Entry.

June 7, 1909.

610. Law.

BAUTISTA VISO LORENZO
vs.
THE PORTO RICO SUGAR CO.

This cause comes on to be heard upon the motion of the defendant Company to set aside the verdict of the jury and grant it a new trial, C. M. Boerman appears for the motion and Henry F. Hord and A. Aponte against the same. The Court, not being fully advised at the end of the argument, takes the matter under advisement, and requires briefs from both sides by tomorrow the 8th instant.

Journal Entry.

September 7, 1909.

610. Law.

BAUTISTA VISO LORENZO
vs.
THE PORTO RICO SUGAR CO.

This cause having been heretofore submitted upon a motion for a new trial, the Court on this day sends an opinion to the files containing its views in that regard, and in accordance therewith it is:

Ordered and adjudged that the said motion be, and the same hereby is, overruled. To which action of the court in so overruling

said motion for a new trial the said defendant by its counsel then and there objects and duly excepts.

And it appearing to the Court that on June 3, 1909, when the verdict of the jury herein was brought in, no judgment was entered in the cause, because of the expressed intention of counsel so to file said motion for a new trial;

39 Therefore it is now ordered and adjudged that the plaintiff Bautista Viso Lorenzo do have and recover of and from the defendant The Porto Rico Sugar Company, the sum of fifteen thousand dollars (\$15,000.00) together with his costs in that behalf laid out and expended, to be taxed, with interest on the principal sum from this date at the rate of six per centum per annum until paid.

Opinion.

(Filed September 7, 1909.)

610. Law.

BAUTISTA VISO LORENZO
vs.
THE PORTO RICO SUGAR CO.

This cause is before us on a motion for a new trial. We have considered the issue with a good deal more than ordinary care, because it is the first large suit of the kind so far as we know that this Court has had to consider. It squarely raises the question whether a sugar factory or central that contracts with a planter or "colono" to grind his cane during a "zafra" or grinding season when nothing is said in the contract about the particular time or months within which the grinding must be done, is liable for any loss or damage that may occur to the colono by reason of not grinding his cane when it is ripe, and whether the colono must take the risk of the machinery of the central breaking down and causing damage, by unreasonable delay in the grinding of his cane. In this particular case the plaintiff alleged that he had made a contract with the defendant to grind his cane for five seasons. He owned several plantations and made several contracts with the defendant the material clause in each being as follows:

"The term of the present lease is that of five crops or "zafras" beginning from the 31st of December last to which date the parties hereto date back the date of the present deed, and shall terminate at the end of the crop of 1912."

40 The plaintiff further in a general way alleged, -and the proofs tended to show—that his cane was ready to be ground and that it should have been ground between the months of January and the first weeks of June, but that instead about half of the first year's crop some 108,000 tons was ground in the latter part of June, and up to the 23rd of July 1908, and that this resulted not only in the crop thus ground producing much less sugar than it otherwise would have produced, but that it also resulted in the rotting of

about two hundred and forty cuerdas of the ratoons or sprouts for the succeeding year of 1909, as no cane at all sprouted or grew upon said quantity of his land. He also alleged that the central had failed to properly grade a piece of railway which it had agreed to let, to haul some of his cane and that he was damaged more than \$1000, by reason of having to haul the cane from that portion of one of his plantations in ox-carts.

The evidence on each side,—which we have just re-read from the stenographer's transcript amounting to 156 pages—is quite conflicting. It appears though that in the early part of the season the defendant defaulted in the number of cars that it was sending to plaintiff's plantation to get his cane, and only furnished him with seven or eight cars instead of 16 per day as it had been furnishing. It further appeared in the evidence that plaintiff protested vigorously against this slow receiving of his cane, and against requiring him to desist from cutting it occasionally for days at a time, and went to the extent of serving a notarial protest upon the defendant on that account.

There was a good deal of evidence tending to show that the grinding season on that section of the island of Porto Rico, is understood to be from January to June inclusive, but it also appears well in evidence that cane cut in the latter part of June even though such cutting is often unavoidable, is still a damage to both parties but more to the colono than to the mill. On the other hand, 41 there is some evidence tending to show that there is no definite time included in the expression "zafra" or grinding season, but that it may run from January even to August.

The defendant complains:

"(1) that the verdict is excessive. (2) that as the contracts do not fix the time within which the cane shall be ground, that therefore evidence could not be heard to limit the time to certain months. (3) that custom cannot be read into a contract in Porto Rico in any event, and (4) that no sufficient proof was made of the custom to grind cane between January and June or any other certain time."

After having given consideration to the brief and argument of counsel for both parties, and to the evidence as set forth in the exhibits and the transcript, we are of opinion, that the jury was right in its holding that this defendant did delay grinding plaintiff's cane for such a length of time as that he was damaged at the very least in the amount of the jury's verdict that is the sum of \$15,000.

It was also in evidence that the mill was a first class one and in good condition when it started; that its capacity was 500 long tons of cane per day of 24 hours; that 25 days is the average time in each month which such a mill ought to run. Therefore this mill should have ground 12,500 long tons or 275,000 quintals per month, so it ought to have ground a total of 1,650,000 quintals of cane between January and June inclusive. It was in evidence that the total cane contracted to be ground at that mill for that season was 1,200,000 quintals,—therefore, a calculation will show that if the mill had run at its ordinary capacity, it could have finished the grinding in about four months. There was evidence that the mill

stopped grinding many times owing to breakages and that once it stopped for twenty days continuously.

The evidence tended to show that it would probably be more profitable for both the colono and the central if all cane could
42 be ground in the months of February, March and April, but the general trend of the testimony was to the effect that early grinding in January resulted in slight loss to both whilst late grinding in June resulted in larger loss to the colono. As to cane ground in the latter part of June and during July the weight of the evidence was that it would ordinarily be disastrous to the colono. Therefore it appears that the six months' term from January to June inclusive, is a reasonable length of the grinding season for both parties, and we do not think the colono ought in the absence of a specific contract to the contrary, be obliged to take a risk that would result in his cane not being ground until the month of July. The colono under his contract is bound to deliver his cane to the mill, and in our opinion it is reasonable to hold that it should be ground at a time that will not result in unnecessary damage to him. See our opinion in *Central Coloso vs. Esteves*, 4 P. R. Fed. 25.

Contracts must receive a reasonable construction in the light of surrounding circumstances, and the parties must be held to have had in contemplation only those risks and delays which reasonable men ought to have had at the time of entering into the contract.

To our mind, as before stated, there can be no question that plaintiff was damaged in at least the amount which the jury found in his favor. The grave question is one of law, that is: Is the plaintiff entitled to recover at all under the circumstances of the case?

We are satisfied that the issues were properly tried and probably submitted to the jury, and are constrained to hold that as matter of law when a sugar factory or central in this island simply contracts to grind — of a colono during a grinding season and at the time knows the condition of the cane that the colono has planted, and knows the capacity of its own mill, that it is its duty to grind that cane within
43 a reasonable time and not to unreasonably damage the colono in and about the execution of the work under the contract.

Plaintiff laid his damages in the sum of \$30,000, which included the default as to the construction of the railroad, and we are of opinion that the proofs more than sustain the jury's finding of \$15,000.

We therefore hold that recovery can be had for a default in that regard in Porto Rico, because under Section 1254 of the *of the* Civil Code, "the uses or customs of the country shall be taken into consideration in interpreting ambiguities in contracts supplying in the same the omission of stipulations which are usually included."

In other words, we do not think that where a colono contracts to deliver his cane to a certain central and is bound by his contract to so deliver, that the central can so unreasonably delay the grinding as to unreasonably damage him. *Coloso v. Esteves*, 4 P. R. Fed. supra. Hence we think it was matter for the jury in this particular case to say, in the absence of a definite stipulation fixing the time within which the cane should be ground, whether the central did so unreasonably damage him. They found and we think properly

on the evidence that plaintiff was so damaged, and it is no part of our duty nor have we the right to disturb the verdict. See our opinion in *Munich v. Valdes*, 3 P. R. Fed. 251.

For the reasons stated, and with a full realization of the importance of the holding, we are constrained to overrule the motion for a new trial and an entry to that effect will be made.

(Signed)

B. S. RODEY, *Judge*.

44

Petition for Writ of Error and Supersedeas.

(Filed September 10, 1909.)

BAUTISTA VISO LORENZO, Plaintiff,

vs.

PUERTO RICO SUGAR COMPANY, Defendant.

Porto Rico Sugar Company, defendant in the above entitled cause, feeling itself aggrieved by the verdict of the jury, and the judgment entered on the 7th day of September, 1909, comes now by Charles M. Boerman, its attorney, and petitions said court for an order allowing said defendant to prosecute a writ of error to the honorable the Supreme Court of the United States, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

And your petitioner will ever pray.

C. M. BOERMAN,
Attorney for Defendant.

Order Allowing Writ of Error.

(Filed September 10, 1909.)

610. Law.

BAUTISTA VISO LORENZO

vs.

PUERTO RICO SUGAR COMPANY.

At a stated term, to wit, the April term, A. D. 1909, of the District Court of the United States in and for the District of Porto Rico, at Chambers in the City of San Juan, Porto Rico, on the tenth day of September, in the year of our Lord one thousand and nine hundred and nine.

45

Upon motion of Charles M. Boerman, attorney for the defendant, and upon filing a petition for a writ of error and an assignment of errors, it is ordered that a writ of error be and

hereby is allowed to have reviewed in the Supreme Court of the United States, the judgment heretofore entered herein, and that the amount of bond on said writ of error be, and hereby is, fixed at \$20,000.00 the same to be a supersedeas in the premises, and the bill of exceptions to be filed by October first 1909.

B. S. RODEY,
*Judge District Court of the
United States for Porto Rico.*

Assignment of Errors.

(Filed Sept. 10, 1909.)

BAUTISTA VISO LORENZO
vs.
PUERTO RICO SUGAR COMPANY.

Now comes the Puerto Rico Sugar Company, plaintiff in error in the above entitled cause, and respectfully submits the following assignment of errors, to wit:

I.

That the Court erred in overruling the demurrer of the defendant company to the complaint.

II.

That the Court erred in overruling the motion of the defendant for a non-suit at the conclusion of the plaintiff's testimony.

III.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness Bautista Viso Lorenzo upon the trial: "Can you tell the jury, or can you not, what is meant by the grinding season in Porto Rico?", to which action of the court defendant by its counsel then and there excepted.

IV.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness Bautista Viso Lorenzo upon the trial: "Mr. Viso, what do you understand by the grinding season stated in those contracts, the 'cosecha' stated in that contract; what do you understand by that clause?", to which action of the Court defendant by its counsel then and there excepted.

V.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness José Ramon Gallard upon the trial: "Do you know how many quintals of cane the land of Mr. Garcia produced in 1909?", to which action of the Court defendant by its counsel then and there excepted.

VI.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness José Ramon Gallard upon the trial: "What kind of cane, good, bad or indifferent, grew on Mr. Garcia's land for the crop of 1909 from the ratoons of 1908?", to which action of the Court defendant by its counsel then and there excepted.

VII.

That the Court erred in sustaining the objection of plaintiff's counsel to the following question asked the witness José Ramon Gallard on cross examination: "Now, isn't it a fact that it is the custom among 'colonos' here in Porto Rico that when one 'colono' has got his cane burned, that all the other 'colonos' mutually help him to cut it and save loss in order that all the others will do the same by him?", to which action of the Court, defendant by its counsel then and there excepted.

VIII.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness Juan Palau upon the trial; "And the second year?", to which action of the Court, defendant by its counsel then and there excepted.

IX.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness Juan Palau upon the trial: "Now, what do you estimate the damages for the second year?", to which action of the Court, defendant by its counsel then and there excepted.

X.

That the Court erred in not allowing the following question to be asked the witness Juan Palau on cross examination: "You just said that it cost \$25.00 or more to plant. On what do you base that? Now give us that in detail", to which action of the Court defendant by its counsel then and there excepted.

XI.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness Juan Mendizabal upon the trial: "Now what damage would he have suffered the second year?", to which action of the Court, defendant by its counsel then and there excepted.

XII.

That the Court erred in admitting in evidence the protest in writing which was marked Exhibit "F" for the plaintiff, to which action of the Court, defendant by its counsel then and there excepted.

XIII.

That the Court erred in admitting in evidence the protest in writ-

ing, which was marked Exhibit "E" for the plaintiff, without a translation into the English language.

XIV.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness Julio Guy upon the trial: "Doesn't it have six or seven or eight suits every year for that reason?", to which action of the Court, defendant by its counsel then and there excepted.

XV.

That the Court erred in sustaining the objection of plaintiff's counsel to the following question asked the witness Eduardo Georgetti upon the trial: "Now, in these two places what is meant by the word 'zafra', and how long do they grind in those two places?", to which action of the Court, defendant by its counsel then and there excepted.

XVI.

That the Court erred in sustaining the objection of plaintiff's counsel to the following question asked the witness Ramón Negrón Flores upon the trial: "Can you tell us what is the custom in such cases in all the plantations when one of the 'colonos' has got his canes burned?" to which action of the Court, defendant by its counsel then and there excepted.

XVII.

That the Court erred in refusing the following instruction asked for by the defendant: "That the contracts offered as testimony between the plaintiff and the defendant company do not contain
49 any clauses specifying the 30th of July as the end of the grinding season". To which action of the Court, defendant by its counsel then and there excepted.

XVIII.

That the Court erred in refusing the following instruction asked for by the defendant: "That if the jury believe that the word 'Zafra' or sugar campaign is the customary of the month- from January to the end of June, that still two weeks, more or less, would not constitute a breach of contract on the part of the defendant." To which action of the Court, defendant by its counsel then and there excepted.

XIX.

That the Court erred in refusing the following instruction asked for by the defendant: "That if the jury from the evidence believe that the delay causing the grinding in July was by itself caused by some unfor-seen events as breakage of machinery (otherwise in good condition), that then the delay in grinding up to July is excusable and not a breach of contract on the part of the defendant." To which action of the Court, defendant by its counsel then and there excepted.

XX.

That the Court erred in refusing the following instruction asked for by the defendant: "That if the jury believe from the evidence that established custom among the planters is that in case of fire in the cane plantation all facilities of the sugar mill shall be given to the damaged plantation and that any delay was caused by a fire in one of the plantations which delivered to the defendant company, that then this delay is excusable and not a breach of contract on the part of the defendant". To which action of the Court, defendant by its counsel then and there excepted.

50

XXI.

That the Court erred in refusing the following instruction asked for by the defendant: "That if the jury believe from the evidence that the defendant company contracted only for an amount of cane which it could reasonably grind during the season save for unfor-seen breakages or other events which could not be foreseen, that then there was no breach of contract by grinding in July and they should find for the defendant". To which action of the Court, defendant by its counsel then and there excepted.

XXII.

That the Court erred in refusing the following instruction asked for by the defendant: "That if the jury believe from the evidence that the plaintiff could have prevented any loss to himself by planting or replanting those acres, the cane of which was cut in July, and did not do so, that then the plaintiff is not entitled to recover and they should find for the defendant". To which action of the Court, defendant by its counsel then and there excepted.

XXIII.

That the Court erred in refusing the following instruction asked for by the defendant: That the delivery of the cane by the plaintiff to the defendant company during the month of July constitutes a waiver and a consent by him to the grinding in July and that therefore he cannot recover and damages therefor". To which action of the Court, defendant by its counsel then and there excepted.

XXIV.

That the Court erred in refusing the following instruction asked for by the defendant: "That the damages which may have occurred to the plaintiff or occur in future after the season of the year 1909 cannot be charged against the defendant company, because they are too remote, and therefore as to these damages they should find
51 for the defendant". To which action of the Court, defendant by its counsel then and there excepted.

XXV.

That the Court erred in refusing the following instruction asked for by the defendant. "That if the jury believe from the evidence that

defendant company had sufficient cars given to the plaintiff to conduct his cane to the factory and that he himself did not use them to the full capacity which they could carry, that then they should find for the defendant as far as this part of the damages claimed by the plaintiff is concerned". To which action of the Court, defendant by its counsel then and there excepted.

XXVI.

That the Court erred in refusing the following instruction asked for by the defendant. "That if the jury believe that together with the custom of grinding from January to the end of June, there is also a custom to help any of the neighboring planters to deliver to the same central their canes in case of a fire, that then any delay caused by such fire should not be charged to the defendant company, and that as to that part of the damages, they should find for the defendant." To which action of the Court, defendant by its counsel then and there excepted.

XXVII.

That the Court erred in refusing the following instruction asked for by the defendant: "That the plaintiff could not stand by and do nothing to save any loss probable from the late cutting of the cane, but that it was his duty to save himself from any loss by planting as soon as possible or replanting as soon as possible that part which was so damaged by the late cutting, and that if the jury believe from the evidence that the plaintiff did not act reasonably in preventing such loss, that then they should find for the defendant". To which action of the Court, defendant by its Counsel then and there excepted.

XXVIII.

That the Court erred in refusing the following instruction asked for by the defendant: "That the defendant was not compelled to deliver to the plaintiff any specified kind of cars for conducting the cane, and that if the jury believe from the evidence that a portable railroad served the purposes as well as a fixed one, that then the defendant company by furnishing such to the plaintiff had fulfilled its contract, and that therefore the plaintiff cannot recover for that particular". To which action of the Court, defendant by its counsel then and there excepted.

XXIX.

That the Court erred in refusing the following instruction asked for by the defendant: "That if the jury believe from the evidence that customarily the grinding season continues up to the 30th of June, but that it is also customary in a great number of sugar mills in the neighborhood to the Porto Rico Sugar Mill to grind up to July, that this then would constitute a part of the custom and that then the plaintiff could not recover for any delay or grinding partly in July.

XXX.

That the Court erred in refusing the following instruction asked for by the defendant: "That as a matter of law a contract means the meeting of the minds of the contracting parties upon the same subject matter and that if there is no evidence that both parties to the contract have interpreted the word "zafra" or grinding season to grind from January up to the 30th of June, that then there was no such contract without the meeting of both minds to that effect". To which action of the Court, defendant by its counsel then and there excepted.

XXXI.

That the Court erred in entering judgment for the plaintiff and against the defendant.

XXXII.

53 That the Court erred in not entering judgment dismissing the complaint.

(Signed)

C. M. BOERMAN,

Attorney and Counsel for the Defendant.

Bond on Writ of Error.

(Filed Sept. 10, 1909.)

BAUTISTA VISO LORENZO

vs.

PUERTO RICO SUGAR COMPANY.

Know all men by these presents, that we, The Porto Rico Sugar Co. as principal, and Luis Rubert y Catala and José Leon as sureties, are held and firmly bound unto Bautista Viso Lorenzo, plaintiff above named, in the sum of Twenty Thousand (20,000) dollars, to be paid to the said Bautista Viso Lorenzo, his executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors, representatives, and assigns, firmly by these presents.

Sealed with our seals and dated the tenth day of September, 1909.

Whereas, the above named defendant, Puerto Rico Sugar Company, has sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above entitled cause by the District Court of the United States for the District of Porto Rico.

Now, therefore, the condition of this obligation is such that if the above named Puerto Rico Sugar Company shall prosecute said writ to effect and answer all costs and damages, if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

54

P'TO RICO SUGAR CO.,

By LUIS RUBERT, *Presidente.*

LUIS RUBERT.

JOSÉ LEON.

Luis Rubert under oath says that he is a freeholder and that he is worth the sum of twenty thousand dollars in visible property over and above his legal liabilities and debts.

Subscribed and sworn to before me this tenth day of September, 1909.

LUIS RUBERT.

JOHN L. GAY,

Clerk Dis't Court of U. S. for P. R.

[COURT SEAL.]

Jose Leon under oath says that he is a freeholder and that he is worth the sum of twenty thousand dollars in visible property over and above his legal liabilities and debts.

Subscribed and sworn to before me this tenth day of September, 1909.

JOSE LEON.

JOHN L. GAY,

Clerk Dis't Court of U. S. for P. R.

[Seal of the Court.]

This bond is accepted and approved as sufficient in form and substance for the purpose intended this 9/10/09 and ordered to be filed.

B. S. RODEY,
Judge D. C. U. S., P. R.

55

Journal Entry.

(October 1st, 1909.)

610. Law.

BAUTISTA VISO LORENZO

vs.

PORTO RICO SUGAR COMPANY.

Order.

In this cause C. M. Boerman counsel for defendant in accordance with his notice to Henry F. Hord, counsel for plaintiff, on this day presents an alleged bill of exceptions herein, to which said opposing counsel objects, and the Court not being satisfied with the matter as presented, and on application therefor grants counsel for plaintiff five days from this date in which to prepare and submit to opposite counsel such translations and proposed additions to the bill of exceptions as he may deem necessary, and counsel for the defendant and appellant is given ten days thereafter in which to incorporate as much of such new matter as he may deem proper in his bill of exceptions, and the same to be then forthwith presented to the Court by both counsel for a settling of the same.

It is further ordered that the time within which to prepare and file the bill of exceptions and forward the record in the cause to the Honorable the Supreme Court of the United States be, and it hereby is, extended for thirty additional days after the expiration of the sixty days' time as at present fixed by the rule.

56

Journal Entry.

October 7, 1909.

610. Law.

BAUTISTA VISO LORENZO
vs.
THE PUERTO RICO SUGAR CO.

At Chambers.

And now on this 7th day of October, pursuant to the Court's recent order herein giving counsel time to prepare the same, Charles M. Boerman and Henry F. Hord, counsel for the respective parties, appear and submit to the Court an agreed bill of exceptions which is then and there, after examination by the Court, duly settled and signed as such, and ordered filed and made a part of the record, and that the same be transmitted with the entire record to the Honorable the Supreme Court of the United States within the time and as required by law.

57

Bill of Exceptions.

(Filed October 7, 1909.)

No. 610. Law.

BAUTISTA VISO LORENZO
vs.
THE PORTO RICO SUGAR COMPANY.

Be it remembered that at the April Term of the United States District Court for Porto Rico sitting at San Juan, to-wit, on the 1st and 2nd days of June, 1909, at the trial of this cause the following proceedings were had, that is to say;

Bautista Viso Lorenzo, plaintiff in this cause, being called as a witness in his own behalf, stated as follows, to wit:

That his name was Bautista Viso Lorenzo and that he executed five contracts with the Porto Rico Sugar Company concerning pieces of land in the jurisdiction of Humacao, four of them being adjoining and one being a separate property named "La Torre", that last year the canes were ground from January to the end of July, that he had received a letter from the defendant sugar factory reducing the number of cars of his cane to seven.

(Witness was handed Exhibit "A" for plaintiff).

That this letter he received from the manager of the sugar factory.
(The letter was then produced and read in evidence as follows):

"HUMACAO, PASTO VIEJO, *March 1st, 1908.*

"Mr. Bautista Viso.

DEAR SIR: From next Monday and until further advice there will be sent you seven cars to haul cane to this factory, 1050 quintals per day.

"Yours,

R. NEGRON."

At the beginning of the grinding in January or February the central (sugar factory) had furnished him with 12, 14 and 16 cars per day, but in April (which was the time when canes should have been ground) they furnished him seven cars. For the whole season of that year witness had 222,000 and some fraction of cane; that he received liquidations which they sent him every fifteen days or every week; that witness needed 12, 14 or 16 cars for his cane as the defendant had furnished him at the beginning; that the central finished grinding the last of his canes on the 25th of July.

Witness was here handed Exhibit "B" for plaintiff, which he identified, and the same was read to the jury as follows:

EXHIBIT "B" FOR PLAINTIFF.

"Porto Rico Sugar Company.

SAN JUAN, PORTO RICO, *June 9, 1908.*

"Statement of Account of the Canes Delivered at the Sugar Factory 'Pasto Viejo' by Mr. Bautista Viso during the Two Weeks from the 1st to the 6th of June, 1908:

Pounds of cane.....	1,325,315
Pounds of sugar, at 5%.....	66,265
Total pounds of sugar.....	66,265
Price per pound of sugar 4.11-3/4.	
Value	\$2,738.46
Discount for expense 12¢ per quintal.....	79.51
Net	2,648.95

"Porto Rico Sugar Company.

SAN JUAN, PORTO RICO, *June 10, 1908.*

Mr. Bautista Viso, Humacao.

DEAR SIR & FRIEND: Enclosed herewith please find statement of your cane account during the week from the first to the sixth of the current month showing a profit of \$2,648.95, which we credit to your good account.

Very truly,

PORTO RICO SUGAR COMPANY,
EDUARDO GEORGETTI, *President.*"

"Porto Rico Sugar Company.

SAN JUAN, PORTO RICO, June 20, 1908.

Statement of Account of the Canes Delivered at the Central 'Pasto Viejo' by Mr. Bautista Viso during the Week from the 8 to the 13th of June, 1908.

Pounds of cane	1,434,890
Pounds of sugar, at 5%	71,744
Total pounds of sugar	71,744
Price per pound of sugar \$5.14-7/8.	
Value	\$2,976.44
Discount for expenses, 12¢ per quintal	86.09
Net	<u>\$2,890.35</u>

"Porto Rico Sugar Company.

SAN JUAN, PORTO RICO, June 10, 1908.

Mr. Bautista Viso, Humacao.

DEAR SIR: We take pleasure in handing you herewith statement of your cane account from the 8th to the 13th of the current month, showing a production thereof of \$2,890.35, which we have credited to your account.

Very truly,

PORTO RICO SUGAR COMPANY,
G. VALLECILLO, *Director*.

"Porto Rico Sugar Company.

SAN JUAN, P. R., June 24, 1908.

Statement of the Accounts of the Canes Delivered at the Sugar Factory 'Pasto Viejo' by Mr. Bautista Viso during the Fortnight from the 15th to the 20th of June, 1908:

60 Pounds of cane	1,244,515
Pounds of sugar at 5%	62,225
Total pounds of sugar	62,225
Price per pound of sugar 4.04.	
Value	\$2,513.89
Discount for expenses, 12¢ per quintal	74.67
Net	<u>\$2,439.22</u>

"Porto Rico Sugar Company.

SAN JUAN, PORTO RICO, June 22, 1908.

Mr. Bautista Viso, Humacao.

DEAR SIR & FRIEND: We take pleasure in handing you herewith the statement of your cane account during the week 15th to the 20th instant, the total of which \$2,439.22 we credit to your account.

Yours truly,

"Porto Rico Sugar Company.

SAN JUAN, P. R., July 6, 1908.

Statement of Account of the Canes Delivered to the Sugar Factory 'Pasto Viejo' by Mr. Bautista Viso during the Week from the 22nd to the 27th of June of 1908:

Pounds of cane.....	1,673,985
Pounds of sugar, at 5%.....	83,699
Total pounds of sugar.....	83,699
Price per pound of sugar 4.00-3/4.	
Value	\$3,354.23
Discount for expenses, 12¢ per quintal.....	100.43
Net	\$3,253.80

"Porto Rico Sugar Company.

SAN JUAN, P. R., July 6, 1908.

61 *Statement of the Account of the Canes Delivered at the Sugar Factory 'Pasto Viejo' by Mr. Bautista Viso During the Fortnight from the 29th of June to the 4th of July of 1908.*

Pounds of cane.....	1,769,320
Pounds of sugar, at 5%.....	88,466
Total pounds of sugar.....	88,466
Price per pound of sugar 4.10 1/2.	
Value	\$3,631.52
Discount for expenses, 12c per quintal.....	106.15
Net	\$3,525.37

"Porto Rico Sugar Company.

SAN JUAN, P. R., July 8, 1908.

Mr. Bautista Viso, Humacao.

DEAR SIR: We take pleasure in handing you herewith the statement of account of your canes for \$3,253.80 for the week from the 22nd to the 27th of June last past and for \$3,525.37 for the week from June 22nd to July the 4th, \$6,779.17, total, which we have credited to your account.

Very truly,

PORTO RICO SUGAR COMPANY,
LUIS RUBERT, *President.*"

"Porto Rico Sugar Company.

SAN JUAN, P. R., July 25, 1908.

Mr. Bautista Viso, Humacao.

DEAR SIR & FRIEND: We take pleasure in handing you herewith the statement of your account of your canes for the 6th to the 11th

of the current month, amounting to \$3,591.88 which we have credited to your account.

62 We are,

Yours very truly,

PORTO RICO SUGAR COMPANY.
LUIS RUBERT, *President.*"

"Porto Rico Sugar Company.

SAN JUAN, P. R., July 25, 1908.

Statement of Account of the Canes Delivered at the Sugar Factory 'Pasto Viejo' by Mr. Bautista Viso during the Fortnight from the 6th to the 11th of July, 1908:

Pounds of cane.....	1,792,595
Pounds of sugar, at 5%.....	89,629
Price per pound of sugar 4.12 3/4.	
Value	\$3,699.43
Discount for expenses — cent per quintal.....	107.55
Net	\$3,591.88"

"Porto Rico Sugar Company.

SAN JUAN, P. R., July 31, 1908.

Mr. Bautista Viso, Humacao.

DEAR SIR & FRIEND: We take pleasure in handing you herewith the statement of your cane account for the week ending the 25th of the current month showing a balance in your favor of \$3,042.27 which we have credited to your account.

We are,

Yours very truly,

PORTO RICO SUGAR COMPANY,
LUIS RUBERT, *President.*

63

"Porto Rico Sugar Company.

SAN JUAN, P. R., July 31, 1908.

Statement of the Account of the Canes Delivered to the Sugar Factory 'Pasto Viejo' by Mr. Bautista Viso during the Fortnight from the 13th to the 25th of July, 1908:

Pounds of cane.....	1,580,410
Pounds of sugar, at 5%.....	79,020
Total pounds of sugar.....	79,020
Price per pound of sugar.....	3.97
Value	\$3,137.09
Discount for expenses, 12¢ per quintal.....	\$94.82
Net	\$3,042.27

The witness continued testifying as follows:

That he had been in the sugar business for twenty and one-half years and that the expression grinding season (zafra) meant the time in which the sugar-cane is ground and that that time lasted from January to June, including June, but that the roots of the cane in that month do not yield what they should. That June is included in the grinding season, but it is not as good a month for grinding as earlier. That his cane which should have been cut and delivered to the factory in May was not delivered and ground until July; the ratoons do not produce anything thereafter and the cane, due to the delay in grinding, does not yield anything at all and the ratoons become in bad condition and the roots of the plants are injured; that in virgin lands, such as were the ones that belong to witness where cane had never been planted before, as many as four crops could be cut from one planting—from four to six; but if the cane was cut late it would give only one crop; that from the first of June to the 25th of July, as appear by the cane cuts introduced, he had cut from his property 108,000 quintals and that the total delivery by him to the sugar factory, during the whole grinding season, was 220,000, and a small fraction, quintals, of which 64 111,000 quintals were cut from January to the first of June and the balance afterwards; that he did not deliver that amount of canes before because the factory did not furnish him with the necessary cars and that he had made notarial demands on the factory to furnish them.

The documents composing Exhibit "C" for plaintiff were then handed to the witness, who stated that one of them concerned the estate "La Torre" and the other four concerned "Pasto Viejo" and that they are all the contracts which he had with the defendant company.

The documents were then offered in evidence and, there being no objection on the part of the defendant, they were, together with their English translations placed in evidence, marked Exhibit "C" for the plaintiff and explained to the jury by counsel.

Said documents are as follows:

"Notarial office established on March 1st, 1901. Herminio Diaz, Lawyer & Notary Public. Copy of Public Instrument No. 93. Executed by Mr. José Toro Ríos and Bautista Viso. Lease of Rustic Property. On December 21st, 1905, San Juan, Porto Rico.

Copy. Corrected. Number Ninety-Three.

In the City of Humacao, Porto Rico, on the Twenty-first of December, Nineteen Hundred and five, before me, Herminio Diaz Navara, Counsellor at Law and Notary Public, with Residence and Open Office in the Capital of the Island, San Justo Street No. 12, appear:

Mr. José Toro Ríos, of legal age, married, property owner and of this city, in his own right and as attorney in fact of his wife,

Mrs. Lucía Guzmá de Toro, of legal age, married, property owner, and of this city, as appears from the power of attorney executed before the notary of this city Mr. Antonio Aldrey, copy of which

65 he will present in due time, and Bautista Viso Lorenzo, of legal age, widower, planter and property owner and resident of San Lorenzo.

I am acquainted with the parties hereto and assuring me that they have and having in my opinion the legal capacity necessary for the execution of this document, they state:

First. That Mr. Toro Ríos is the owner in fee simple of a rustic property situated in the ward of Antón Ruiz, of this municipal jurisdiction, consisting of two hundred and sixteen and thirty one hundredths cuerdas, equivalent to eighty four hectares, eighty-nine areas and seventy-six centiares, bounded on the North by the lands of the plantation "Mulas", by other lands of José Toro Ríos, on the South by the lands of Petra Ríos and Alfonzo Faura and on the West by Alfonso Faura y Ríos, which property Mr. Toro Ríos acquired by purchase from José María Cuadra, according to deed executed on the fourteenth day of March nineteen hundred and four before the notary of this city Antonio Aldrey, recorded at folio forty-five of volume twenty of Humacao, parcel nine hundred and forty-six, second inscription.

Second. That in accordance with the agreement of the parties hereto, the said Toro Ríos leases to Mr. Viso, for himself, his successors and heirs a part of the parcel which has been described in the foregoing paragraph, consisting of fi-ty-four cuerdas, that is to say, of twenty-five hectares, fifteen areas and forty-seven centiares, bounded on the North by the wire fence starting at the boundary line of the Faura Brothers and crossing the principal strip from East to West and ending at the swinging gate, on the South by a ditch which separates it from another property of Mrs. Petra Ríos, part of which also have been leased this day to the party hereunto Mr. Bautista Viso; on the East by a ditch which separates it from the principal strip and starting from the stream ends at the
66 river, and on the west by a ditch which starts at the south boundary line and ends on the north boundary line.

Third. The lessor Mr. Toro Ríos agrees to sell to the lessee Mr. Viso the second crop canes which remain in the portion of land leased, the delivery of which shall be made in accordance with the cutting of the canes actually planted, which shall be completed before the thirtieth of April, nineteen hundred and six, leaving the fixing of the price of these second crop canes, for the date of the delivery thereof and stating also that if the contracting parties do not agree as to the said price, a friend of both shall be named, who shall settle all the difference and whose decision shall be obligatory and unappealable for both parties.

Fourth. From the date of the delivery of the said second crop canes, the term of lease of the portion of the property, the subject matter of the present contract, shall begin and shall continue for six successive crops and end on the thirty-first of January, nineteen hundred and twelve, the rental to be paid by the lessee in addition to one dollar, the consideration of this contract, shall be ten dollars annually for each cuerda, the said rental shall be paid at the end of every six months but the party hereto Mr. Viso reserves the right

of paying the same in advance and should he so do he shall be credited with interests at the rate of eight per cent annually.

Fifth. All the improvements made by the lessee on the property, of any nature whatsoever, including therein any building or construction, shall remain upon the completion of this contract, for the benefit of the property without the lessee having any right to exact any payment whatsoever from the lessor.

67 Sixth. Mr. Toro Ríos agrees on his part that all the canes which the lessee plants upon this part of the property, shall be ground in the factory of the Humacao Sugar Company, agreeing for this purpose, to facilitate Mr. Viso for the transportation of the said canes, not only any railway and railway cars which may belong to the said factory, but also a kilometer of portable track; it being understood that the placing and return of the portable track shall be at the expense of the lessee, the return thereof to be made immediately upon his finishing with the use thereof.

Seventh. Mr. Toro Ríos, in the same manner agrees that the Humacao Sugar Company shall pay to Mr. Viso for his canes, an amount in sugar equal to that paid to the most favored colono.

Eighth. It is an indispensable and primary condition of this contract that the lands leased shall be planted with cane and that they shall be ground by the Humacao Sugar Company, Mr. Viso agreeing to load the same on the portable cars and take them to the railroad as well as to cut cane not less than twelve months old.

Ninth. Mr. Toro Ríos agrees to give to Mr. Viso a third part of all the seed cut during the next crop.

Tenth. The lessee shall pay all the taxes charged upon that part of the property leased, in the proportional part of the number of cuerdas leased.

Tenth. It is expressly agreed by both parties that this contract may be recorded at the request of either of them in the Registry of Property of the District.

I give to the parties hereto the legal advice necessary and having read to each of them the present deed they execute, ratify and approve it inasmuch as regards them before the witnesses B. B. Llenza and Rafael Guzmán, of legal age, of this city and without legal impediment as such as they state, all sign before me the Notary,

68 all the contents of this public instrument, I certify.—(signed and sealed) Bautista Viso Lorenzo.—José Toro Ríos.—B. B. Llenza.—Rafael Guzmán.—Herminio Diaz.

A true first copy of the original under the number indicated on file in my current notarial protocol.

In witness whereof and at the request of Mr. Bautista Viso, I certify this present copy on two sheets of paper attaching the corresponding internal revenue stamp of fifty cents in San Juan, Porto Rico, on the third day of January, nineteen hundred and six.

[SEAL.]

(S'g'd)

HERMINIO DIAZ,

Lawyer and Notary.

(Stamp.)

This document was recorded in volume twenty (20) of Humacao at folio one hundred and forty-seven (147), parcel nine hundred and forty-six (946), fourth inscription.

Humacao, August 31st, 1907.

JOSÉ M. CUADRA.

I certify that to this document there have been attached and cancelled as taxes seven internal revenue stamps, one of five dollars, one of one dollar, Nos. 636035 & 636588, and five fifty cent stamps, in accordance with articles 1 & 5 of the tariff and Art. 356 of the Political Code.

[SEAL.]

CUADRA,
Registrar of Property."

(Stamps.)

"Notarial Office established on March 1st, 1901. Herminio Diaz, Lawyer & Notary Public. Copy of Public Instrument No. 92. Executed by Mrs. Petronila del Carmen Rios y Berrios and Mr. Bautista Viso y Lorenzo. Lease of Rustic Property. On December 21, 1905. San Juan, Pto. Rico.

Copy. Corrected. Number Ninety-Two.

69 In the City of Humacao, Porto Rico, on the twenty-first Day of December, Nineteen Hundred and Five, Before me, Herminio Diaz Navarro, Counsellor at Law and Notary Public, with Residence and Open Office in the Capital of the Island, San Justo Street, Number Twelve, Appear:

Mrs. Petronila del Carmen Rios y Berrios, of legal age, widow, property owner and resident of this city, represented by Mr. José Toro Ríos, of legal age, married, property owner and resident of this city, which power of attorney he offers to substantiate in the most solemn form as often as may be required; and

Mr. Bautista Viso y Lorenzo, of legal age, widower, farmer, property owner and resident of San Lorenzo.

I am acquainted with the parties hereto and they assure me that they have and having in my opinion the legal capacity necessary, they state:

First. That Mrs. Petronila del Carmen Ríos y Berrios is the owner in fee simple of a rustic property called Pasto Viejo, situated in the ward of Antón Ruiz of this municipal jurisdiction, consisting of five hundred and sixteen (516) and thirty-six (36) hundredths cuerdas, equivalent to two hundred and eleven hectares, nine areas and thirty-three centiares, bounded on the North by lands of the estate of Mrs. Avelino Rios, on the East by the estate of Mr. Antonio J. Cuadra and Mr. José C. Bajandas and the estate Tinajero; on the south by lands of Avelino C. Peña; farm Quintana, estate of Mauricio Peña, the road leading to the Playa and the lands of José Toro Ríos; and on the West by other lands of the estates of Mr. José A. de la Torre, and Mr. Mauricio Peña and lands heretofore of Noya y Hernandez, at present of José Rodriguez de las Albas,

which property Mrs. Ríos y Berrios acquired by the joining of others as appears from the deed executed before the Notary of this city Mr. Antonio de Aldvery on the thirteenth of November, eighteen hundred and ninety-nine, recorded in the
70 Registry of Property for the District at folio one hundred and eighty-three of volume seventeen of Humacao, parcel number eight hundred and ten, first inscription.

Second. That in accordance with the agreement heretofore made Mrs. Ríos y Berrios leases to the other party hereto Mr. Viso y Lorenzo, to himself, his successors and heirs, a part of the foregoing property consisting of one hundred cuerdas, bounded on the North by a property heretofore belonging to Jose M. Cuadra from which it is separated by a ditch; on the South by part of the road which leads to the factory of the Humacao Sugar Company; on the West by the straight line which leads from this road and ends on the North boundary; and on the East by other lands of the principal strip, the said property being crossed from East to West by a railroad belonging to the Humacao Sugar Company, and the river Anton Ruiz.

Third. That the term of this lease mentioned in the foregoing clause shall be for six consecutive crops terminating on the thirtieth of January nineteen hundred and twelve.

Fourth. That the lessee Mr. Viso y Lorenzo, in addition to one dollar, the consideration of this contract, shall pay as rental, ten dollars annually for each cuerda, payable at the end of every six months, reserving to Mr. Viso the right to make the payment in advance in which case the lessor shall credit him with interest at the rate of eight per cent annually.

Fifth. All the improvements which may be made by Mr. Viso y Lorenzo on the property leased whether of construction, building or anything whatsoever shall remain for the benefit thereof without the lessee having the right to claim any payment whatsoever for the same.

Sixth. Mr. Toro Ríos in the name of his principal Mrs. Ríos y Berrios, agrees that all the canes which the lessee plants on the leased property shall be ground in the factory of the Humacao
71 Sugar Company, for which purpose he agrees to facilitate for the transportation of the said canes, not only any railway and railway cars belonging to the said factory, but also a kilometer of portable track; it being understood that the placing of the same and the return of the movable track shall be for the account of the lessee and the same shall be made as soon as he has finished using it. In the same manner Mr. Toro Ríos in the name of his principal agrees that the Humacao Sugar Company shall pay to Mr. Viso for his canes an account equal to that paid to the most favored planter.

Seventh. It is an essential and indispensable condition and primary basis of the present contract, that the leased lands shall be planted with cane, and that the same shall be ground in the Humacao Sugar Company, Mr. Viso agreeing to load with the same the portable cars and to bring them to the railroad as well as to cut canes of not less than twelve months old.

Eighth. Mr. Toro Ríos in the name of Mrs. Ríos y Berrios, in

the same manner agrees to give to the lessee Mr. Viso a third part of all the cane seed which the said Mr. Toro Ríos may cut during the next crop.

Ninth. It is understood that the lessee Mr. Viso shall pay the taxes imposed on the part of the property leased in proportion to the number of cuerdas of which it consists.

Tenth. It is agreed by the parties hereto that at the request of any of them without the consent of the other, that the present contract shall be recorded in the Registry of —

I give to the parties hereto the proper legal instructions and each of them having read the present deed, they execute, ratify and approve the same before the witnesses B. B. Llenza and Rafael Guzmán, of legal age, of this city and without legal impediment as such as they state and all sign before me the Notary, of all of which
72 as stated in this document I certify.—Bautista Viso Lorenzo.—B. B. Llenza.—Rafael Guzman.—(Signed) Herminio

Diaz.

A true first copy of the original which under the number indicated is on file in the current protocol of this notarial office. In witness whereof at the request of Mr. Bautista Viso Lorenzo, I certify these presents on two sheets of my paper adjoining the corresponding internal revenue stamp of fifty cents on the third of January, nineteen hundred and six.

(S'g'd)

HERMINIO DIAZ,
Lawyer & Notary Public.

This document was recorded in volume seventeen (17) of Humacao at folio one hundred and eighty-five (185), parcel eight hundred and ten (810), third inscription. Humacao, August 31st, 1907.
JOSE M. CUADRA.

I certify that to this document there have been attached and cancelled as taxes, five internal revenue stamps, one of five dollars and one of three Nos. 63,645, 105,884, and three fifty cent stamps, in accordance with art. one and five of the tariff and Art. 356 of the Political Code.
CUADRA, *Registrar.*

“Notarial College of Porto Rico, District of Humacao. Antonio de Aldrey y Montolio, Notary of Humacao. No. 38. Deed of Lease, executed by Mr. Bartolomé Flaquer y Marcano, as Attorney in Fact of the Spouses Mr. José Toro Ríos and Mrs. Lucia Guzmán y Toro, in favor of Mr. Bautista Viso Lorenzo. Humacao, P. R., March the 21st, 1909. Before Antonio de Aldrey y Montolio, Notary of Humacao.

73 Number thirty-eight. Lease.

In the City of Humacao, Headquarters for the Notarial District, on the Twenty-first of March, Nineteen Hundred and Seven, before me, Antonio de Aldrey y Montolio, Notary Public for the Island of Porto Rico with Residence and Open Office in this City and the Witnesses Hereinafter Mentioned, Appear:

1. Bartolomé Flaquer y Marcano, married, property owner, forty years of age and resident of this city;

2. Bautista Viso Lorenzo, widower, property owner, forty-five years of age, of San Lorenzo, residing in this city.

The second appears herein in his own right and the first as Attorney in Fact of the legitimate spouses Jose Toro Ríos and Lucia Guzmán y Toro, property owners, of legal age and residents of this city, as appears from the deed executed before me in this city and which representation he agrees to prove as often as may be necessary.

I, the Notary, certify as to my acquaintance with the profession and residences of the parties hereunto as well as their age and civil state in accordance with their statements, and they assuring to me to be in the full enjoyment of their civil rights without anything to the contrary appearing to me and having in my judgment the legal capacity necessary for the execution of the present deed of lease, they make the following statements:

First. That the principals of the party of the first part, Mrs. Toro and Guzman, as represented by their attorney in fact, Bartolomé Flaquer, own the following property: Rustic property: A parcel consisting of two hundred cuerdas, level lands, high land, hills and swamps, equal to seventy-eight hectares, seventy areas and nine centaires, situated in the ward of Antón Ruiz of this municipal jurisdiction, bounded on the North by Petronila del Carmen Ríos y Berrios, and the estate of Atanasio J. Cuadra; on the South by other

property of the estate of Ramón Tinajero; on the East with
74 the property of the estates of Atanasio J. Cuadra, Mrs.

Dolores Quiñonez and Mr. Francisco Virella; and on the West by Petronila del Carmen Ríos y Berrios: There is on this property, forming an integral part thereof, a two story wooden house roofed with clay tiles and galvanized iron, resting upon masonry pillars and wooden up-rights, measuring 9:50 meters frontage by 11:50 meters in depths, with an extension of 9:50 meters long by 3:40 meters wide, with masonry steps on front covered with cement and a masonry cistern with a watering trough for cattle, covered with cement, with its cover supported on masonry pillars. The spouses Toro y Guzman also possess a strip of land at the South of the described property, which belongs to the farm Pasto Viejo and reaches to the river, and another portion abutting upon the first described property, that of the estate Tinajero, farm Quintana of Mr. Ramon Pou and drains of Pasto Viejo.

Second. That the first described property was acquired by them by purchase from José Gumersindo and Felix Valois Roman Bajandas y Mulers, without they being able at this moment to say how they acquired the same in the record in the Registry of Property, assuring that it is recorded.

Third. That the said described property, according to the statement of the party of the first part, is free and clear of all encumbrances.

Fourth. That he has agreed upon with the party of the second part the lease of the property aforesaid and the two parcels mentioned for the term, rental and conditions hereinafter stated.

Therefore, they fulfill the agreement made and executed the present deed in the manner set in the following clauses:

First. Mr. Bartolomé Flaquer y Marciano, an attorney in fact in and for the spouses José Toro Ríos and Lucía Guzmán y Toro gives in lease to Mr. Bautista Viso Lorenzo, not only the rustic
75 property which origin and other data are stated in the beginning of this document, and also the two parcels mentioned and he may use the said properties to plant canes and for pasture.

Second. The rate of rental of the present deed is the sum of one thousand five hundred dollars annually, payable at the end of each six months, that is to say, at the rate of seven hundred and fifty dollars each six months and payable at the residence of the lessors or the legitimate representative, without any excuse or pretext whatsoever.

Third. The term of the present lease is that of five crops or *zafra*s counting from the thirty-first of December last, to which date the parties hereto date back the effect of the present deed, and shall terminate at the end of the crop of nineteen hundred and twelve.

Fourth. All the taxes which are or may be assessed upon the property, the subject-matter of the present deed, and during the term of the present contract, shall be paid by Mr. Viso.

Fifth. It is agreed that all the improvements made by Mr. Viso Lorenzo on the property herein treated of, may be removed by him at the end of this contract.

Sixth. The lessor reserves the right to cross the property, the subject matter of this contract, with the tracks actually constructed thereon as well as that of cutting fire wood either for themselves or for third parties.

Seventh. The lessee shall not establish any easement whatsoever upon the property herein treated of without express consent of the lessor.

Eighth. Bartolomé Flaquer y Marciano in accordance with the instructions he has received, agrees and undertakes that all the canes which the lessee Mr. Viso plants in the property leased shall be ground in the factory Humacao Sugar Company on account of which it is agreed and undertaken that Mr. Bautista Viso will be furnished with, for the transportation of the said canes, not only
76 any railway and railway cars which may belong to the said factory, but also a half kilometer of portable track, it being understood that the lessee shall place the same and return the said portable track at his own expense and that the return thereof shall be made as soon as he has finished using the same.

Ninth. In the same manner the Attorney in Fact of the lessors agrees that the Humacao Sugar Company shall pay to Mr. Viso y Lorenzo, for his canes, a sum in sugar cane equal to that paid to the most favored colono.

Tenth. The parties hereto agree that this document can be recorded in the Registry of Property and that either of the parties hereto may petition the same whenever he may deem it proper, and they sign mutually, in this city, for the fulfillment of this contract.

I, the Notary, did not give any advice to the parties hereto since they stated that they were perfectly informed, notwithstanding this, I explained them to them.

Such is the document which the parties hereunto in the representation in which they appear accepts in all its parts and agree to keep complete and execute the same in the most solemn legal form.

Thus they state, execute and sign, together with the witnesses present, residents, of legal age, and without impediment as such, whom I certify I know personally, Antonio Noya and Demetrio Carmona, after they have all read this document in use of the right which I informed them all of which I certify.—José Toro Ríos and Lucia Guzmán de Toro, by Bartolomé Flaquer.—Bautista Viso Lorenzo.—Antonio Noya.—Demetrio Carmona.—Signed.—Antonio de Aldrey, Not.

A true and faithful copy of the contents of the original on file in my current general protocol of public instruments, to which I refer. In witness whereof and at the request of the lessee, I
77 certify this present copy which I sign, seal and flourish on two sheets of my notarial paper, affixing hereafter a fifty cent stamp in accordance with the notarial law and annotating the making of the same in Humacao, Porto Rico, on the twenty-third day of March, nineteen hundred and seven.

(Sgd)

ANTONIO DE ALDREY, *Not.*

This document was recorded in volume twenty-one (21) of Humacao, at folio one hundred and sixty (160), over, parcel number seven hundred and forty-six (746) triplicated, twelfth inscription. Humacao, November thirty, nineteen hundred and seven.

JOSE M. CUADRA.

Attached five stamps, one of five dollars, one of three, one of one dollar and two of fifty cents, in accordance with article- 1 and 5 of tariff and Art. 456 of the Political Code. Humacao, November 30, 1907.

"Notarial College of Porto Rico, District of Humacao. Antonio de Aldrey y Montolio, Notary of Humacao. No. 37. Deed of Lease executed by Mrs. Petronila del Carmen Rios y Berrios in favor of Mr. Bautista Viso y Lorenzo. Humacao, P. R., March the 21st, 1907. Before Antonio de Aldrey, Notary of Humacao.

Number Thirty-Seven. Lease.

In the City of Humacao, Headquarters for the Notarial District, on the Twenty-first day of March, Nineteen Hundred and Seven, before me, Antonio de Aldrey y Montolio, Notary Public for the Island of Porto Rico with Residence and Open Office in this City and the Witnesses Hereinafter Mentioned Appeared:

1. Mrs. Petronila del Carmen Rios y Berrios, widow, property owner, fifty-four years of age and resident of this city; and
2. Mr. Bautista Viso y Lorenzo, widower, property owner, forty-five years of age, of San Lorenzo, residing in this city.

I, the Notary, certify to my acquaintance with the profession and residence of the parties hereunto as well as their age and state of civil life, in accordance with their statements, they assuring me that they are in the full enjoyment of their civil rights, without anything to the contrary being known to me and having in my opinion the legal capacity necessary for the execution of the present deed of lease, they make the following statements:

First. That the party of the first part is the owner in fee simple of the following property:

Rustic Property: A parcel called "pasto Viejo", situated in the ward of Anton Ruiz of this municipal jurisdiction, consisting of five hundred and sixteen and thirty-six hundredths cuerdas, equivalent to two hundred and eleven hectares, nine areas and thirty-three centiares, bounded on the North by the lands of the estate of Mrs. Avelino Rios, on the East by the estate of Atanasio J. Cuadra, Mr. José C. Bajandas y Tinajero; on the South by Avelino C. Peña, the farm "Quintana" of Mr. Ramón Pou y Rios, the estate of Mauricio Peña, the road leading to the Playa of this city and José Toro Rios; and on the West by the estate of José Agustín de la Torre, Mr. Mauricio Peña and lands of Mr. José Rodríguez de las Albas, today Mrs. Maria Rodriguez de Bustelo.

Second. That the said property is formed by the joining of various parcels as is seen in the deed executed before me in this city on the thirteenth day of November, eighteen hundred and ninety-nine, and recorded in the Registry of Property of this District in volume seventeen of Humacao, folio one hundred and eighty-three, parcel number eight hundred and ten, first inscription.

Third. That according to the statement of the party of the first part the said rustic property is free and clear of all encumbrances.

Fourth. That she has agreed upon with the party of the second part the lease of a parcel of land which must be segregated to form a new parcel from the principal strip, which for the purposes of this contract is described as follows: Rustic property: A parcel known

by the name of "Pasto Viejo", situated in the ward of Antón Rios of this municipal jurisdiction, consisting of two hundred and six cuerdas of land, equivalent to eighty hectares, ninety-six areas and seventy-two centiares, bounded on the North by Alfonso Faura and the property "El Micaco" of José Toro Rios; on the South by the principal strip whence it is segregated; on the East by the property "El Hicaco" of José Toro Rios and the property "Bajandas" of the said Toro Rios; and on the West by Mrs. Maria Rodriguez de Bustelo; which lease is agreed for the term, consideration and considerations hereinafter mentioned.

Therefore, they make the agreement decided upon and execute the present deed, in the manner explained in the following clauses:

First. Mrs. Petronila del Carmen Rios y Berrios, grants and leases to Bautista Viso y Lorenzo, the rustic property as segregated, the origin of which, area and other data are expressed in the beginning of this present deed, and which can be used for pasture and cane.

Second. The rental of the present deed is the sum of Two Thousand and Sixty Dollars per year or at the rate of ten dollars per

cuerda payable at the end of each six months, that is to say, one thousand and thirty dollars semi-annually, at the residence of the lessor or her legal representative.

Third. The term of the present contract is that of six crops or zafras beginning from January nineteen hundred and six, to which date the parties hereunto date back the provisions of this deed and shall terminate at the end of the crop for the year nineteen hundred and twelve.

Fourth. All taxes which are or may be assessed upon the property herein leased and during the term of the present contract, shall be paid by Mr. Viso.

Fifth. It is agreed that all improvements made by Mr. Viso Lorenzo in the property treated of shall be removed by him upon the completion of the present contract.

Sixth. The lessee, Mr. Bautista Viso, agrees and undertakes to respect the railway at present on the property treated of herein as they are actually built, agreeing on his part not to establish upon the said property any easement whatsoever.

Seventh. The parties hereunto execute reciprocally and in the most solemn legal manner the most complete and adequate release for all the business and transactions which they may have had up to the thirty-first of December, nineteen hundred and six and which may refer also to the purchase of the second crop canes and lands cultivated to planting time, rentals and taxes to the aforesaid date and in virtue thereof they agree and undertake not to make any claim at any time as regards these matters.

Eighth. Mrs. Petronila del Carmen Rios y Berrios agrees and undertakes that all the canes which the lessee, Mr. Viso, plants upon the property leased should be ground in the factory of the Humacao Sugar Company, for which she agrees and binds herself that Mr. Bautista Viso will be furnished for the transportation of said cane not only any railway line and railway cars which may belong to the said factory but also a kilometer of portable track, it being understood that the placing and return of the said portable line shall be for the account of the lessee and he shall make return thereof as soon as he shall have finished using the same.

Ninth. The lessor, Mrs. Rios y Berrios, also agrees that the Humacao Sugar Company shall pay to Mr. Viso a sum for his sugar equal to that paid to the best favored planter.

Tenth. The parties hereto agree that the recording of this document in the Registry of Property of this District can be made at the request of either party when they deem it proper, and they mutually agree upon this city for all the matters and transactions arising from the fulfilment of this contract.

I, the Notary, did not give to the parties hereto any legal advices as they stated that they were perfectly acquainted with them notwithstanding that I explained them to them.

Such is the document which the parties hereto make and accept in all its parts and binds themselves to keep, carry out and execute in the most solemn legal form.

Thus they state, execute and sign together with the wit-

nesses, residents, of legal age and without legal impediment as such, whom I certify to know personally, Mr. Antonio Noya and Demetrio Carmona, after having read to all of them this document, they having refused this right themselves, of which I informed them, of all of which I certify.—Petra Rios Vida de Toro. Bautista Viso Lorenzo.—Antonio Noya.—Demetrio Carmona.—(Signed) Antonio de Aldrey.—Not.

A true and faithful copy of the contents of the original on file on my general current protocol, of public instruments to which I refer. In witness thereof and at the request of the lessee, I certify the present first copy which I sign and seal and flourish on two sheets of my notarial paper affixing furthermore a fifty cent stamp as provided for by the notarial law and noting the making thereof in Humacao, (Porto Rico) on the twenty-third day of March, nineteen hundred and seven. Between the lines "issued for pasture and cane" valid. I certify.

(S'g'd)

ANTONIO DE ALDREY.

This document was recorded in volume twenty-three of Humacao, at folio fifty-eight, parcel one thousand and fifteen (1015) first inscription. Humacao, August thirty-first, nineteen hundred and seven.

JOSÉ M. CUADRA.

I certify that to this document there have been affixed and cancelled as taxes, six internal revenue stamps, one of ten dollars, one of three dollars, Nos. 128,097; 105,582; and four fifty cent stamps in accordance with clauses one and five of the tariff and Art. 156 of the Political Code.

CUADRA, *Registrar*.

82 "No. 68. Deed of Grinding Contract. Executed by the Humacao Sugar Co. represented by its Manager, Mr. Prudencio Eugui y Barriola, in favor of Bautista Viso Lorenzo. On May the 11th, 1907. Before Antonio de Aldrey Montolio, Notary of Humacao, Porto Rico.

Number Sixty-Eight. Grinding Contract.

In the City of Humacao, Headquarters for the Notarial District, on the eleventh day of May, nineteen hundred and seven, before me, Antonio de Aldrey y Montolio, Notary Public for the island of Porto Rico, with residence and open office in this city, and the witnesses hereinafter mentioned, appear:

1. Mr. Prudencio Eugui y Barriola, bachelor, property owner, thirty years of age and resident of this city.

2. Mr. Bautista Viso y Lorenzo, widower, property owner, forty-five years of age, of San Lorenzo and residing in Humacao.

3. The second appears in this transaction in his own right and the first as Manager of the corporation Humacao Sugar Company, which representation he will prove as he states, as often as may be necessary.

I, the Notary, certify to my acquaintance with the professions and residence of the parties hereto, as well as their age and civil

state according to their statements, they assuring me to be in the full enjoyment of their civil rights, without my knowing anything to the contrary, and having in my opinion the legal capacity necessary for the execution of this present deed for the grinding of cane, they state as follows:

First. That Mr. Bautista Viso has leased from Florencio Berrios a rustic property in the ward of Antón Ruiz, in this municipal jurisdiction, on which he plants cane, as appears from a deed executed in this city on the seventeenth day of November last before the Counsellor at Law and Notary, Mr. Juan F. Vias Ochoteco.

Second. The parties hereto have agreed upon the grinding of the said canes since the fifteenth of March last in the manner
83 hereinafter mentioned and for the purpose that this agreement shall be made in a public document, they execute the present deed in the manner set forth in the following clauses:

First. Mr. Prudencio Eugui, as manager in and for the corporation Humacao Sugar Company agrees and undertakes that all the canes which Mr. Bautista Viso may plant on the property he has leased from Florencio Berrios be ground in this factory and which have been mentioned at the beginning of this deed.

Second. The conditions covering the said grinding are exactly the same as those which the said Mr. Viso has agreed upon in other deeds executed before the Notary, Mr. Herminio Diaz, and before me on the twenty-first of March last, of lease from Petronila del Carmen Rios y Berrios and José Toro Rios, which the party of the first part states that he is perfectly acquainted with.

Third. It is expressly agreed that the party failing in the fulfilment of this contract shall be obliged to pay indemnization for the damages and costs which may be suffered as well as the fees of the Attorney which he may have to use in his defense.

Fourth. The parties hereto agree that the provisions of this contract are dated back to the fifteenth of March last and until Mr. Viso has leased the property of Florencio Berrios; and that the private contract signed on the said date be affixed hereunto to be inserted in the copies which may be made thereof.

Such is the document which the parties hereto execute and accept in all its parts and agree to keep, complete and execute in the most solemn legal form.

Thus they execute and sign together with the witnesses present, residents, of legal age and without legal impediment as such, whom I certify to know personally, Juan C. Medrano and Angel Montalvo,

after they had all read this document, of which right I in-
84 formed them, all of which I certify. At this time and before the parties signed the following explanation is made. That

in case the Humacao Sugar Company shall become the property of any other company or become into possession of any other successor, the present contract shall be respected in all its parts. All of this they stated and ratify, sign with the witnesses, which I certify.—Humacao Sugar Co. by Prudencio Eugui, Treasurer.—Bautista Viso.—Juan C. Medrano.—Angel Montalvo.—Signed Antonio de Aldrey. Not.

Duplicate. In the central *Pasto Viejo* of the municipal jurisdiction of Humacao, on the fifteenth of March, nineteen hundred and seven, appear: as party of the first part Mr. Prudencio Eugui, of legal age, bachelor, resident of Humacao, as representative of the Humacao Sugar Co. and, of the second part, Bautista Viso Lorenzo, of legal age, widower, of San Lorenzo, residing in Humacao; and both persons mutually had agreed and agree in the presence of the witnesses who appear and sign hereinafter the following contract; First. Mr. Prudencio Eugui, as manager and representative of the Humacao Sugar Co. agrees to grind in the said factory that he represents all the cane which Mr. Viso will plant on the lands he has leased from Mr. Berrios, according to the deed of the seventeenth of October, nineteen hundred and six executed before the Notary Vias Ochoteco of Humacao; during the term of the lease, on the same conditions as he has agreed in his deeds of lease of the other lands leased by him from José Toro Ríos and Doña Petronila Ríos, according to deed executed before the Notaries Herminio Diaz Navarro and A. Aldrey. Second. It is agreed by both parties that this extra judicial contract shall have the same force and value as if it were a public instrument, the party failing to keep the same shall respond for such failure to comply. Third. It is also agreed to change this to a public instrument at such time as either of the parties may petition and as well to record the same in the Registry of Property.

Fourth. That the party hereto who fails to comply with this agreement, shall be obliged to indemnify for the damages caused by reason thereof. Fifth. That this agreement being by mutual accord they sign it in the most solemn manner.—Bautista Viso.—Humacao Sugar Company by Prudencio Eugui, Treasurer.—José Gonzalez Prida.—S. Rocafort.—Arturo R. Borges.

A true and faithful copy of the contents of the original on file on my general current protocol to which I refer. In witness whereof and at the request of Mr. Bautista Viso, I execute this present first copy which I sign and seal and flourish on three sheets of my notarial paper, affixing hereafter a fifty cent stamp in accordance with the notarial law and noting the making of this copy in Humacao, Porto Rico, on the twenty-second day of May, nineteen hundred and seven.

[SEAL.]

(Sgd.)

ANTONIO DE ALDREY."

(Stamp.)

Witness was asked: "What is meant by the grinding season in Porto Rico?" Defendant objected because the complaint contains no allegation of custom. Objection overruled and defendant accepted.

The witness continued:

The word "zafra" means the time within which the sugar cane is ground. If the grinding is not done before July it might cause a reduction in the crop of three or four or five hundred quintals not only in the ratoons, but also in the new planting. If it is delayed until after the 15th of July you can scarcely cut the ratoons

and find the seed, and the seed cannot be reduced to sugar. If the canes are left on the ground until June, they have less sucrose, and the cane also suffers because it weighs less and has less sucrose. That during last year's crop witness's canes were in good condition and he was ready at any time to deliver them to the sugar factory and asked for cars for that purpose. The sugar factory was in bad condition and some people who had less cane than witness were furnished by the factory with double the amount of cars. The witness was asked the following question: "Mr. Viso, what do

86 you understand by the grinding season stated in those contracts, the 'cosecha' stated in the contracts, what do you understand by that clause?"

Counsel for defendant objected that the terms of a written contract cannot be varied by oral testimony, and the court held that if there is a local custom showing the meaning of those words the witness may state it. Counsel for defendant noted an exception.

The witness continued:

He understood from the term 'cosecha' in the contract that his cane would be ground between January and June. The custom of the defendant central with other sugar planters who ground their canes at the factory, for instance, Messrs. Saldaña & Company, to grind the canes from January to June. It is the custom of that factory to consider the grinding season from January to June; last year they finished grinding in June. That the defendant company built a railroad through all of the tracks of land belonging to the plaintiff, but that in one of them, namely, the Berrios land, they laid a track but did not put in ballast and the engine could not run on that road to get any cane; and that by reason thereof witness had to haul his canes from that tract with oxen—a distance of more than 250 meters, at a loss of more than \$1,000; that he had to haul said canes across the Anton Ruiz river; that he estimated the loss on his canes, because of the delayed grinding, at \$25,000, and to make this clear he stated that last year he had a crop of 220,000 to gather and that he should have gathered more, but that this year he only gathered a fraction over 98,000 quintals, whereas he should have gathered this year the same as last year or perhaps more. That the weather conditions this year and last were the same and that the crop had the same care, but that he had not been able to replant and had lost the ratoons of his last year's canes; that he lost

87 them because they were cut in June and July; and under those circumstances you can not get a second crop; that his items for damage claimed against the defendant company are as follows: first, at least \$1000 because of the defective railroad track; next, for loss of cane on 241 acres of land, 201 of which were of ratoons which last year yielded them 700 and 800 quintals per acre, and this year he had to replant it and he estimated that it should have yielded him at least 500 quintals per acre. Of the 241 acres 200 were in ratoons and 41 acres of first year cane, which was damaged on account of being planted late. On the latter he estimated that the damage would be at least 300 quintals per acre, the

total being in dollars \$22,000 at five and a half cents per quintal, making a total of \$23,000, at which witness estimated his damages.

Cross-examination by Defendant:

The defendant company ground the canes of some of the cane planters in July. The Humacao Sugar Company, of which the defendant is the successor, finished grinding its canes before the end of the grinding season. It finished in June and in the previous years it had very little cane to grind. It had never ground canes in July and it had only been grinding cane since the previous year. The factory is four years old. In the year previous to the one we are speaking about it finished grinding in June, and before that there was no factory there. There were four crops: the first crop there was only a little amount of cane, and the second crop was finished in June. The fourth crop is the only one which he claims under; that it finished in July, and the present crop is the fourth. In former years it finished its grinding in May and June and never in July. All the surrounding factories end their grindings in May and there is only some remnant of the cane that they grind in June; that the witness knew that the Yabucoa Sugar Company grinds from January to May. He do not think that any of the surrounding

sugar factories grind their cane in July. Roig's factory
88 ground a small part of these canes that year as the Porto

Rico Sugar Company sent some of the cane to it in July; that he does not know it to be a fact that many mills in Porto Rico grind generally into July, but that he does know that the grinding season is from January to June. The defendant company always received the canes which were sent by witness. The weather conditions are the same now as they were before; that the ratoons of the canes which are cut in June are very poor and that the ratoons of the cane which is cut in March and April are first class; that he understood from the contracts that the grinding would extend into the first weeks of June, but never supposed it would extend beyond that time. At the time he made the contract the mill was in process of construction and the owner told him it would be constructed with all modern appliances. The first contracts were made while the mill was in the course of construction and others were made later; that is, after the factory was up, and at that time witness knew the amount of cane which the mill could grind, and he also knew the amount of canes which the factory had contracted with the planters to grind; that he did not know at the time he made the contracts the above conditions, that it would be impossible for the factory to continue grinding in June. That the factory, without increasing the capacity of the mill, entered into contracts with more planters to take their cane. That they did this after the date of his contracts and that these new contracts were made with Emilio Faura, Pedro Mas, and with Messrs. Saldaña & Company and some others that witness did not remember the names of, and that he does not know the amount of canes that were covered by those contracts.

JOSE RAMON GALLARDI, being called as a witness in behalf of plaintiff, testified:

That he lives at Humacao; knows plaintiff and is an employee of his and has been so for two years and four months; that he is a Spaniard and has been in Porto Rico twelve years; the last 89 years of which have been devoted to cane-raising; that he is at present plaintiff's mayordomo and was so in 1908; that the years he has been engaged in farming were spent in and around Buena Vista, Carolina, and Humacao; that he is familiar with the extent and condition of the canes which plaintiff had in 1908; that the canes were in good condition; that the weather was seasonable and that the weather was good for canes in which to grow; that plaintiff finished delivering his canes to the defendant company on the 25th of July; that the usual time in that district for grinding canes is from January to the first of June, and that canes ground after that date do not produce good results because they do not contain the same amount of sucrose or sweet; that when cane is cut after June it does not produce the same results next year as if it were cut earlier, and if the canes are left on the ground and not cut until July they will rot and will produce no crop at all next year; that plaintiff had for grinding from January to June of 1908 417 acres of cane, all in good condition and which could have been delivered to the factory, if it had had cars for hauling it, by the end of May; that the succeeding year (this year) plaintiff only had 260 acres of cane and there was some loss; the cane was cut late did not sprout and that plaintiff suffered loss by reason of the fact that the factory did not furnish him cars in time and he could not deliver more cane for that reason. From the said 417 acres of land plaintiff will have the same cane as he had this year. Witness knows the Berrios tract of land; that there was a railroad laid through the plaintiff's property, but the engine could not go on the track and plaintiff had to haul his canes on the track with oxen; that he had to do this because the engines could not go over the track; would not support them. Plaintiff had to do this hauling with oxen and had to pay for the oxen and peons, and if the railroad had been in condition to operate he would have been saved that expense, which amounted to more than \$1000. Canes planted and in good condition on land, such as plaintiff's 417 acres, would produce at least four 90 crops without replanting; they might have ratoons for four years and this has nothing to do with the condition of the soil or the location of the land. The 417 acres were land of very much fertility and plaintiff's crop for 1908 was from the first and second cutting. About one-half of them were from the first crop (gran cultura) and the rest of it was from ratoons, from cane which had been cut only once. Witness estimated plaintiff's loss, by reason of his crop, at at least \$25,000, basing this estimate on his loss of crop for this year and next year. That part of the 417 acres, which was in second crop, produced 500 quintals per acre, and during 1908 some parts of them yielded 700 quintals and other parts 800 quintals per acre. Witness knows a man by the name of Andrés García who has land near plaintiff's which he plants in sugar-cane.

The lands of García and plaintiff adjoin. García's land and plaintiff's land are the same and, according to witness' experience as a sugar man, should produce the same amount of sugar; he was not sure when the cane was cut from García's land in 1908, but he had finished in May. There was some difference between the methods of cultivation employed by plaintiff, in 1908, and those employed by Mr. García for that crop, the difference consisting in that plaintiff prepared his land in time and Mr. García sometimes delayed. Mr. García's cultivation was not as good as plaintiff's.

The following question was asked the witness: "What kind of cane, good, bad or indifferent, grew on Mr. García's land, for the crop of 1909, from the ratoons of 1908?"

Attorney for defendant objected on the ground that the question was incompetent, irrelevant and immaterial and the court having allowed the question to be asked, counsel for the defendant saved an exception.

The witness continued:

Answering the question,—“Good cane.” The defendant company started taking canes from plaintiff's land in 1908, on 91 the 15th of January, and furnished for that purpose during January fourteen and sixteen cars per day. Plaintiff was able to load those cars every day. The number of cars was afterwards reduced by the factory, by the end of February, to seven cars per day. Witness did not know the reason why this change was made, but the factory had enough cars to have supplied all of its farmers with all the cars they needed. The sugar factory owns the railroad and the factory has been one for four crops; that is, the crop of 1909 is its fourth crop. In 1907 it had just started and did very little grinding, and it finished in June. The next grinding was ended on the 20th of July. Witness knows where the factory “Ejemplo” is; it belongs to Antonio Roig. Some of Mr. Viso's cane was ground at the Ejemplo factory in 1908 because the “pasto Viejo” (the defendant factory) had not enough capacity to grind all the cane. The defendant's factory during the crop stopped from one day to another; it ran regularly but it had too many canes to grind. Witness was not sure how many tons of cane the factory could grind, but the defendant factory is a larger factory than the Ejemplo one. There were times during the season of 1908 when plaintiff was left without any cars, and there were many days when he received the cars in the afternoon. During the season of 1908 the canes of Arambura & Company, who were farmers for the defendant company, caught fire and the cutting of plaintiff's canes was ordered stopped for about twenty days. Witness was not sure but he thought this was in May. When the number of cars which was being sent to plaintiff was reduced from fourteen or sixteen down to seven he wrote to San Juan about it, but witness does not remember whether he did anything else.

Cross-examination:

Witness stated: That he is a mayordomo for plaintiff and has been so for four years and four months, or from the beginning of 1907,

and that canes were always ground up to the beginning of June. Some of the factories grind canes in July and even in August, but it is not proper. The proper time is between January and 92 June. Canes ground in July do not have so much sweet and they do not sprout afterwards, and this results in a total loss.

Canes which are ground in January and even in February also have a less percentage of sugar or the difference is less. There is somewhat less sugar in January than in March and April, but canes are ground in January. In January and February there is more sucrose than in June, but less than there is in March, April and May, but canes are ground in January and February because it is the custom to start the grinding at that time in order that the ratoons may be strong for the next crop. It would be better if all the canes could be ground in March, April and May. Plaintiff could not have replanted his land in which the ratoons became bad in July in the same year, nor could he have planted those lands at the time when everybody else planted in 1908 and 1909 so as to prevent this loss. He could not have removed the rotten plants and planted new ones because the season was too late on account of the rains, but when it came time to plant he could have planted cane then. Cane known as "gran cultura" is planted from July onward, but plaintiff could not, in July of 1908, have planted gran cultura canes because it rained heavily and he could not get any seed at that time to plant. It is not true that for gran cultura canes there is no necessity of getting seed, nor that they simply cut the canes and plant them. Such canes are planted the same as those which are planted in the spring, pieces of cane being used for planting; but plaintiff could not do this in July of 1908 because he had no canes to use as seed for that purpose. He might have used for this purpose some of the canes which he planted in January, 1908, and which were not cut, but he could not have planted them on account of the rains. It depends upon the land whether rain impedes the planting of cane, and plaintiff's land was low land which during rainy weather could not be planted. The regular time for planting in that neighborhood for gran cultura is October, November and December, and for the 93 other culture in the Spring—January, February, March and April. Plaintiff planted his lands in October and November for gran cultura with new planting. He might have taken out a part of the ratoons which had rotted and replanted them in October, 1908, but not all of them. He could not replant all of it in that way because in certain parts the ratoons did not sprout, and he could not take them out in those places and replant because the *whether* did not allow it. But in October it did and he planted the cane in October. He planted all that he could. He did not plant all of the 157 acres, the difference between 417 and 260, in October, but some of it he planted afterwards; some part of it was planted last month. They did not replant all of those acres in July or October, November or December, because the weather would not permit it. The weather did not allow planting up to October, 1908, and then plaintiff began the planting of those lands. He did not plant all of it because his resources did not allow him to do the

work of five months in one month. Cane planted after December is not gran cultura but is Spring planting, and if the person planting desires to leave it for next year he may extend his Spring planting into January, February, March and April. The cane cars which were sent for plaintiff's cane had a capacity of eight to ten tons, but the factory had given instructions that they should not be loaded with more than eight tons. These instructions were given by a general order from the manager. Sometimes they ordered to load on more than that. The usual load which plaintiff put on when the railroad was good was eight or nine tons, and when the road was in bad condition up to six tons. They did not load the cars with ten tons because they had received no orders to that effect and they had received orders from the manager of the defendant sugar factory to load up to eight tons. The cars would have held ten tons, but they did not load them up to ten tons because they had orders from the manager not to load more than eight tons because the track was in bad condition. The superintendent of the sugar factory, Mr. Ramón Negron, who was manager last year, was the man who gave these orders; he gave them to witness personally at all times. A few times the cars were packed with twelve or

94 eleven tons, when the road was good and the distance nearer.

A part of the track had not been well constructed and therefore the cars could not be loaded with eleven and twelve tons. Plaintiff also had to use a portable track which the factory gave him for the cars, but that track would not support the cars which the factory sent him. This portable track or road was given to the plaintiff by the factory to facilitate the work. Plaintiff had nothing to do with the Ejemplo factory. He delivered his canes to the Porto Rico Sugar Company factory and he did not pay anything to the Ejemplo for grinding his canes. A fire happened in a farmer's place and for many days the work of bringing the canes was stopped. Witness was asked the following question: "Now, isn't it a fact that it is a custom among colonos (cane farmers) here in Porto Rico that when one colono has gotten his cane burned that all the other colonos mutually help him to cut it and save loss in order that all the others will do the same by him?"

Counsel for plaintiff objected to the question on the ground that it is immaterial, because even if so it would make no difference in the ultimate time in which all of the canes should be cut. The court sustained the objection and counsel for defendant excepted.

Witness continued, stating "About 120 acres were burned, I believe."

JUAN PALAU, being called as a witness in behalf of Plaintiff testified as follows:

That he lives in Juncos, is a cane-farmer, and has been one for the last 24 years, all of the time at Juncos; that he knows the Plaintiff in this case, and also the Defendant, the Porto Rico Sugar Company, which formerly was called "Pasto Viejo"; he was not acquainted with the condition of the plaintiff's canes before the grinding of 1908, but after the canes were removed from the ground he saw

plaintiff's land; it is pretty good sugar land; the condition of that land in so far as the crop on the same was concerned, after the canes were taken off for the grinding of 1908, was bad; he has not
95 seen the crop on the land for the year 1909, but he saw the land shortly after the crop of 1908 was cut off; he saw it in August, and at that time it was in very bad condition; no ratoons had sprouted, presumably because of the delay in cutting the cane, because the canes were not cut at the proper time; if canes are not cut until after the season for cutting them is over they give very little results the next crop; witness knows what is meant in Porto Rico by the expression "Zafra"; that expression refers to the time of the year from January to June, including very little of June and nothing of July; if land is planted in cane and the cane is not cut until the latter part of July the succeeding crop produces very little; after witness had viewed the land that these canes were cut from he estimated the damages which Plaintiff had suffered by reason of the condition of the said lands at that time; the damages consisted in not having ground the cane at the proper time, at the right time; witness estimated that for the first year there was a total loss, because the ratoons did not sprout, and for the second year a loss of more than one-fourth; Defendant objected to the testimony referring to the second year's damages and the court overruling the objection, he excepted. He estimated the net loss on the first crop at \$35.00 per acre, and there were 240 acres damaged.

Witness was then asked the following question: What do you estimate the damages for the second year?" Counsel for defendant objected to the question, the Court overruled the objection, and counsel for defendant excepted.

Witness continued: "As the loss for the first year had been a total loss the next year it would be the same. The land which he saw could not be replanted that year, but it could be replanted the next year by re-ploughing it. In that locality it cost from \$16 to \$25, according to the season, to plant land with cane, and it would probably cost more on this land, because it is very compact; it would probably have cost more than \$20.00 per acre for re-planting. It costs from \$20.00 to \$25.00 per acre in that section to cultivate an
96 acre of ratoons; it sometimes cost \$16.00 to \$18.00, according to the weather.

Cross-examination by Defendant:

Witness has planted cane in Juncos, Porto Rico. The cost of planting an acre of cane depends on the season; some seasons it is less than \$25.00, and some seasons more. Witness was asked: "On what do you base that?" Now give us that in detail." The court not permitting the question, defendant excepted. When it has rained and the land is in condition and easily worked it is cheaper; it is cheaper in February, March and April. I did not measure the 240 acres; I was told that there were 240 acres. According to what witness saw the canes were ground after July; he saw the land in August and from what he saw the cane had been cut in July.

JUAN MENDIZABAL, being called as a witness in behalf of Plaintiff, testified as follows:

That he lives in Juncos, is a cane farmer and has been such for 10 years and is acquainted with Plaintiff and knows well his farm; that it is near Juncos, in the jurisdiction of Humacao. I did not see Plaintiff's canes before they were cut or the grinding of 1908, but he did see the land from which the canes were cut afterwards. He saw the land on the 11th day of August, and there was nothing on the land; the cane was dead; it had not sprouted. Some little patches had sprouted, which, according to statements, had been cut in the first days of June, but they could not grow, the reason for the lack of cane-sp-outs on this land was because the cane was cut out of time, too late. The proper time for cane cutting in the District of Humacao is between January and June. I know what the expression "Zafra" means in that district; it means that they begin grinding in January and end in May or during the early part of June. The ratoons which witness saw on the land in August were not sufficient to return a crop for the grinding season of 1909; there were no sprouts there. Witness went over the ground and did not see

any. He and others went over 201 acres of ratoons and 40
97 acres (which Plaintiff had planted) of first-growth cane, but out of season. The land which witness went over was land from which the canes had been ground and he went over it after the grinding season. The ratoons did not sprout because the canes were cut after the grinding season was over and afterwards we had heavy rains and the carts did a lot of damage to the plantation. Witness estimated that Plaintiff had suffered a total loss on 201 acres. Supposing that cane land would produce 500 quintals per acre, Plaintiff would have made a loss, net, of 300 quintals per acre because it would have cost him 200 quintals per acre for cultivation. This would mean that at \$3.50 per quintal of sugar Plaintiff's net profit per acre would have been \$60.00 after deducting \$40.00 for expenses of cultivation. He should have netted \$60.00 per acre net profit on the 240 acres if he had not been damaged, because in that place the first-growth cane is more expensive, owing to the drainage, etc., and after that the ratoons produce more profit. The 240 acres at \$60.00 would have produced him \$14,400.00, and I think he was damaged that much.

Witness was then asked the following question: "Now what damage would he have suffered the second year?" to which Counsel for Defendant objected, and, the Court having overruled his objection, he noted an exception.

Witness continued:

At about one-half of that amount. His damage for the second year would be about one-half as much as for the first year. He could not have saved this loss of the second year, because the land could not be re-planted at that time, and then the rainy season set in. This year he had no profit at all and it would have been necessary for him to leave it (the cane) for next year. If he had replanted his land he could not have gotten any profit out of it until 1910, and it would not have been proper to replant it, but the land should

98 have been cultivated and used. It would have been necessary to re-plough it, because where the cane rots a hole is left. The cost of this replanting would have been the same as the original cost of planting the cane. In marshy soil this would have been about 80-dollars per acre of first-growth cane, because ditches would have had to be opened for drain. Thus it would have cost \$80 per acre to replant these lands. In lands such as plaintiff had, the first crop would not yield any profit to the grower, but he would get his profit in the second crop of ratoons, and those were the canes that were destroyed. The cane that he cut was destroyed and was a total loss. Witness knows the tract of land that belongs to Mr. Berrios, which is being planted by plaintiff; there is a railroad track on that tract, belonging to the Porto Rico Sugar Company, a part of that track, for about 200 meters, had no ballast at all. Only the cross ties were laid and the rails upon them, but the engines could not pass over. If the railroad had been built so that the engine could have hauled the cars in and out on that tract of land, the difference in the cost of handling the cane from it and sending it to the factory would have been great, because plaintiff had to have constantly men and oxen to haul the cane to the cars.

Cross-examination:

99 In July, 1908 I was in Juncos. There is a sugar factory at Juncos also. Witness does not know the difference in kilometers from plaintiff's plantation to Juncos; the distance is not very great from Juncos. They also ground canes in July that year at Juncos. Canovanas factory is far away from there. I do not know how far it is, but it is not near there. I do not know whether they ground canes in July 1908 at Canovanas. The "Ejemplo" factory is not far from the defendant factory; quite a short distance, but witness does not know whether or not they ground canes in July, 1908. He frequently went to plaintiff's place, but he did not visit the cane fields. He knew that his 240 acres of cane had been cut in July, because he could see that they had been recently cut, during the latter part of June and all the month of July. One could tell when canes had been cut in June by the sprouts, and the others had not sprouted. He could not say that all of these 240 acres were cut in July, but nearly the whole of it. Plaintiff had called upon witness to see the ground after the grinding season was over, and assessed the same. It is good soil; first class. If land is marshy, it costs more to plant it than if it is dry land. It depends on the location; there is no fixed rate for that. He estimates that it costs 80-dollars per acre for the planting of marshy land, including the expenses from the plowing, and then the draining opening of ditches, and then the cultivation. The land was damp and would have had to be drained. It is not true that before witness saw the land it had already had three or four crops taken from it. The first crop had been planted by plaintiff. Plaintiff had not planted any crop there before the crop of 1908. He does not know that of his own knowledge, but from what had been told him.

Redirect examination:

The Juncos Central ground in July of that year, and it got into trouble with its colonos or farmers for that very reason.

BAUTISTA VISO LORENZO, being called as a witness in his own behalf, testified as follows:

The witness was shown and identified Exhibit "E" for Plaintiff, which was then introduced and read in evidence to the jury, as follows:

EXHIBIT "E" FOR PLAINTIFF.

Salvador Fulladosa y Mir, Lawyer and Notary.—No. 57. Notification act executed by Mr. Arturo Aponte Riera in his capacity as attorney for Mr. Bautista Viso Lorenzo on the 19th of May 1908. Humacao, Porto Rico.

Salvador Fulladosa y Mir, Lawyer and Notary. Humacao, Porto Rico. Number Fifty Seven. Notification Act.

In the City of Humacao, on the nineteenth day of May, 100 1908, Before me, Salvador Fulladosa y Mir, Lawyer and Notary of the island of Porto Rico being a resident and citizen of the city of Humacao, Santa Rosa Street, and the witnesses which will be stated, there appeared:

Mr. Arturo Aponte Riera, a resident of Humacao, bachelor, lawyer and twenty five years old.

He appears in his capacity as attorney for Mr. Bautista Viso Lorenzo, a resident of this city, property owner and farmer.

As to my knowledge of the appearing party, I the Notary do hereby certify and as to his age, estate, profession and residence I refer to his own statement. He assures me that he is in the full enjoyment of his civil rights and I know nothing to the contrary, and he having in my opinion the legal capacity for the execution of this instrument, he says:

That it is necessary for him to set in a public instrument certain facts and for that purpose he requires me as a Notary to go to the factory of the corporation Porto Rico Sugar Company and to there require the person who there represents the said corporation to answer the following interrogatories:

First. If it is not true that on Saturday the sixteenth day of the current month of May the factory notified the farmer Bautista Viso to suspend the cutting of his canes.

Second. Whether this order was given because of breakage or failure of the machinery of the factory or for what other reason.

Third. If it does not know that Mr. Viso although he has a few cars less than the Messrs. Saldaña & Co., has a larger or equal amount of cane planted and ready for grinding at the Porto Rico Sugar Co. during the present grinding season.

Fourth. That he explains the reasons why Mr. Viso has been sent seven cars during the months of March and April of this year whereas other farmers such as Messrs. Aramburu & Co. has received
101 twelve and thirteen, these farmers being smaller farmers than Mr. Viso.

Fifth. That he explains the reason why in the apportionment of cars between the different colonos of the factory it was not proportional to the numbers of acres planted by them or to the cane already for grinding in the mills of the factory.

Sixth. That he state the exact number of cars which the Porto Rico Sugar Co. has ready for service for allotment among the farmers of the central during the present grinding season.

Seventh. That he state the allotment made during the different fortnights from January to May to the different farmers of the factory.

Eighth. That he also state the reasons why new farmers were taken on by the factory, such as Messrs. Faure, Mas & Saldaña, Buena Vista, Josefa and Australia, inasmuch as the factory did not have a capacity sufficient for such new business and which will result in damage to the other farmers.

Ninth. That he state the motive why canes belonging to the different farmers are being ground during the present month at the factory of Mr. Roig.

Tenth. That he state the motives why this was not done before when Mr. Roig was in condition to assist the Porto Rico (Sugar Co.), he not having sufficient cane to grind during the night, a thing which was not done during the factory grinding season.

Eleventh. Whether he knows the damages which have been caused to Mr. Viso by reason of the small number of cars which have been furnished to him during the present crop and to say whether he is disposed to accord him with the value of said damages which amount to Forty Thousand Dollars that being the lowest calculation made but which may amount to much more by reason of the delay in the planting and disprouting of the canes.

In virtue whereof I acknowledge myself notified accordingly and having gone to the factory of the corporation Porto Rico Sugar Co. and being in the presence of the Manager Mr. Ramón Negrón Flores, whom I know I notified him by a literal reading of the contents of this act and he stated that in reality he did give an order on Saturday to Mr. Viso as he did to all of the other farmers of this factory to stop cutting cane with the object of giving a preference to the grinding of those canes which had been recently burned belonging to Messrs. Aramburo & Co. according to the contract which they had with the factory and because of high considerations of a moral character in accidents such as the one which has occurred to those gentlemen which are always borne in mind without any manner of protest by all of the factories of the island; that in the division of cars he is accustomed to make it always in an equitable form and according to the necessities of the factory and of the farmers; that the grinding of the cane of several farmers of the factory in the factory of Mr. Roig is due to the fact that the company wishes to hurry the end of the cutting and grinding of canes for the benefit of those with whom it has relations; that he understands that Mr. Viso cannot have suffered the damages which he states and that in so far as the other questions which have been asked him he considers that he should not answer them even for courtesy.

So he stated and sign and the witnesses present, residents and of

age and without any legal exemption for being so and whom I certify to know Mr. Juan Rosa and Mr. José Gonzalez Prida after each one of them had read this document in compliance with his right of which I advised them as to which and as to all of the other matters contained herein, I the Notary do certify.—Ramón Negrón.—Juan Rosa.—José Gonzalez Prida.—signed. Salvador Fulladosa.—There is an Internal Revenue Stamp of the value of one dollar cancelled by the Notary.

103 It agrees well and faithfully with its original which is on my general protocol of current public instruments under number fifty seven to which I refer. In virtue of all of which and at the request of Mr. Bautista Viso I give this first copy in two sheets of notarial paper of my use: I have made a note of the making of this copy which I sign and seal in Humacao on the nineteenth day of May, nineteen hundred and eight. Corrected —le—not valid. I certify.

[Internal Revenue Stamp Cancelled by the Notary.]

(Sgd.)

SALVADOR FULLADOSA.

Plaintiff thereupon rested his case.

Thereupon defendant made a motion for non-suit, which being overruled defendant excepted.

ABELARDO DE LA HABA TRUJILLO, being called as a witness in behalf of Defendant, testified under oath as follows:

That he lives at Rio Grande and is a Director of the Porto Rico Sugar Company, and has been its Secretary since its organization up to this year, and that he was one of the organizers of that Company. Witness had read the contracts made by the Company with Plaintiff. The word "zafra" as contained in these contracts is understood in that community as meaning the time within which the cane is cut and ground. Witness was not a Director of the Humacao Sugar Company, with whom the contracts were made by Plaintiff. He has read the contracts between Plaintiff and Defendant-Company. The time included or covered by the word "zafra" is variable. It varies according to the weather and interruptions and break-downs that might occur in the factory between January and July.

Cross-examination by Plaintiff:

When witness said that the time was variable in that district he meant that some factories in that section had ground up
104 to July, inclusive. If witness was speaking to a "colono" or sugar farmer about the word "zafra", without referring to any particular case, it would be understood that it meant the grinding season, which might extend to July and August, according to the weather and other conditions. Cane does not get over-ripe before July and August; it depends upon the time when planted; there might be cane which would be just right at that time. He had never known a contract fixing the grinding period; it depends upon the locality whether rains set in in July, and sometimes in June, so that the canes are not fit to grind. Sugar factories grind in August be-

cause of some break-down in the machinery of the plant, or for some strange reason, and when the weather has prevented it. Under normal conditions the factory would not grind in August. Whether it would grind in July under normal conditions would depend upon the machinery with reference to the project which the Company gives to the cane-farmer. If the machinery is good ordinary modern machinery it should not grind into July. The natural time to grind is between February and May; that is the natural period of time to grind in Porto Rico. He knew that a great many of the contracts of the Defendant-Company made subsequently to his leaving the Executive Committee fixed June as the ultimate length of the grinding season. He thinks that they have been specified in that way. He was Secretary up to September or October of last year at the general meeting of 1908. I took part in the making of the contract with Saldaña & Company and subsequently he understood that some other contracts had been executed with that stipulation. The Saldaña contract stipulates the grinding season to be between January and June.

Redirect examination :

The proper grinding season, both for the factory and the farmer, is between February and May, and especially better for the factory, because the cane has then more sucrose. If cane is ground before

February it is not detrimental to the factory and *and* it is
 105 favorable to the farmer. In June and July it is never profitable for the factory to grind canes, and it loses money on canes ground in those months to a great extent, because the cane has less sweet then.

JULIO GAY, being called as a witness in behalf of Defendant, testified under oath as follows:

That he lives at Juncos, 20 or 25 kilometers from the Defendant Sugar Factory, and that he has been a cane-farmer for 18 years, and has been delivering his canes to the Juncos Factory for four years. The crop of a sugar plantation starts usually in January and its continuance depends on the weather. The word "zafra" means in the community ordinarily from January to July. The Juncos factory since its establishment has never finished grinding its canes in June but has kept on until July, and other factories have also ground in July. I am well acquainted with cane planting; it is my trade. If cane is cut in July and the weather is good nothing happens to it; it produces no effect on the canes at all. The farmer does not lose anything, because the cane continues growing and weighs more. With reference to the factory, there is a defect, because the cane has less sucrose. The cost of planting an acre of cane in witness's district he estimates at \$60.00. When cane is cut in July, late in July or in the middle of the month, and the weather is rainy the ratoon is spoiled. If the weather is dry, nothing happens to it. If the weather is rainy, it will not be a total loss; they grow, but not so well.

Cross-examination by plaintiff:

Witness's only connection at present is with the Juncos Central, and he is one of its largest stockholders, but he is not a stockholder in the defendant Company, and never was. He makes all of the contracts with the farmers for the Juncos Central. He draws
106 them. He drew up these contracts three years ago, but after that he left the administration of the factory. He did not remember whether or not it is true that all of the contracts drawn by him for the Juncos factory with the cane farmers specified that the crop should be ground by the 30th of June; it is three years since he has drawn any contract. It is not true that his own contracts with the Juncos factory specified that the grinding season should end in June, but he thinks that his contracts specify that his cane shall be ground by the Juncos factory during the months from January to June. Although that is the case, I say that the grinding season is understood to mean until July, because the Juncos Central has not up to date finished grinding before July, and he knows of many other factories which have done the same. The Juncos Central this year will grind into July.

Witness was then asked this question:

"Does not it (the Juncos Factory) have six or seven or eight suits every year for that reason?"

To this question counsel for the defendant objected on the ground that it was immaterial and incompetent; the Court overruled his objection, and he saved an exception.

Witness continued: that factory has not been sued heretofore, not a single suit. I have not received any notification of a suit pending for that reason in this Court. It might be, but he did not know; the factory has not been summoned. I do not know that there are four or five suits pending for the same reason in the District Court of Humacao. He does not know anything about it.

WILLIAM SHANDON MARR, being called as a witness in behalf of defendant, testified on oath as follows:

Direct examination:

He resides at Canovanas factory, and has been there for fourteen years engaged in the sugar cane business all of the time,
107 and his occupation now is manager of a factory known as "The Loiza Sugar Co." It is some distance from the defendant Company's factory, but not very far, and he knows of the conditions in the neighborhood of defendant Company's factory as to cane growing, it being more or less in the same district as that of the Canovanas factory. If canes were cut in the first part of July, or up to the middle of July, the effect of the next year's crop would be that the canes would be somewhat shorter than if they had been cut in May or June. The following year they would be somewhat shorter, because they would have less time to grow. The extent of loss would depend very much upon the weather, upon the season of the following year. If they had good growing weather the loss would be less, but if they had any dry weather for several months after the

cutting, the canes would naturally be so much shorter the following year. If the weather were rainy the plants would not be totally destroyed; it would be very difficult to suppose that any ratoons would be totally destroyed; he had seen a case where certain patches of cane were destroyed by flood, but he had never seen a case of the field being totally destroyed on account of the weather or the season when the canes were cut. The best time to plant cane for "gran cultura" is from July to November, and if cane were planted for gran cultura in August or the latter part of July, it would not be ready for grinding the next season, but for the one following, and of course from gran cultura the crop is very much larger. If the planting is destroyed in some way and the farmer plants in July to November, he would miss one crop, and then the following season he would naturally expect to have a much larger crop. "Pequeña Cultura" (Small cultivation) is from November to December, and they would ripen the same as "Gran Cultura". It would not miss a year in that case, but they would have only fourteen months to wait, because it would be reaped in the second following January. The cost of planting "Gran Cultura" is not any more than that of planting any other

108 cane. Much depends upon the class of the soil. In that section there are low-land and hill land, and in lowland, where there is a great deal of drainage to be done, it costs more than on high land. The price ranges up to 60-dollars to the point of cutting of cane; that would be a reasonable figure for low-lands. The low-lands are generally better lands for cane. The cost of cultivation on hill lands is about 30 dollars. It cost from 50-dollars to 60-dollars per acre to plant good cane land. Out in that section if canes which get ripe in May or June are allowed to stand until the first of July, or the 20th of July, the loss would depend on the class of cane; whether it was plant-canes and at what time these plant-canes were put down. If they were plant-canes put in in April or May and laid over until July, there would be no serious loss at all, if there were any loss. When canes are cut in July or in August, and there are no roots or ratoons springing up, and the land for that reason was allowed to lay idle, the loss might be due to bad cultivation of the previous year if the land were low and not well drained. He has seen that in several instances among his own farmers where the canes were reaped in July. And, on the other hand, if there was bad, wet weather, that might be the cause of it.

Cross-examination:

Generally speaking, if one were told that a certain person would be in Porto Rico during the grinding season, one would expect to see him some time from the month of January to the month of June. The Canovanas Factory did not finish grinding its last years' crop until the 29th of July. There were several breakages of the machinery. Ordinarily the grinding there would have been finished in June, but unfortunately they had breakages of the machinery over which they had no control. The difference in price between the cultivation of "gran cultura" (first planting) and the cultivation

109 that is necessary to give to ratoons (the sprouts that spring up) for an acre of cane would vary from \$30 to \$40, but there would also be a difference in the weight of the cane. The crop from the ratoons is not as big as that from the first planting. If for any reason a man's crop was destroyed after cutting the canes off of the first crop he would have to re-plant his land and that would cost him \$50.00 or \$60.00 per acre, but he would have as against it a greater amount of cane. If this happened and he re-planted in 1908 he would not get any crop the following year, but the next one after, or in 1910. He would lose the intermediate crop. In "gran cultura" you always lose one crop. Now, with "pequeña cultura", or planting done in December or January, such a farmer would still lose the crop of 1909, and so in any event he would lose one crop, but there would be a difference in the weight of the canes that he would get from the lands when he got his crop of 1910. He would not get any crop until 1910. Witness did not see Plaintiff's land. He is a stockholder in the Defendant-Company now, but he was not at the time of the happening of the events out of which this suit grew. He was not a stockholder during the grinding season of 1908, but he is now. He knows why the Defendant-Company did not get through grinding its cane earlier in 1908: it was because they had considerable trouble with the breaking of gears. He does not think that the Defendant-Factory had more cane to grind between January and June that it could handle. They had a small crop and he attributes the delay principally to the breaking-down of the machinery. He has never noticed the Plaintiff's land so as to be able to pass an opinion on it. If the land were low and marshy and the canes were allowed to stand on it for several months after they had ripened it would produce a condition of unusual dampness or water if the weather was rainy. If the weather was rainy and the canes were cut off in May or June the ratoons under ordinary conditions would be much better than if the cane had been allowed to stand until July. The rainy season ordinarily starts in in June, but unfortunately last year it did not.

110 Redirect examination :

The capacity of the Defendant-Factory was certainly ample for the canes they had growing. He inspected it under the condition it was in last year and it could have ground 500-tons of cane a day, discounting breakages,—that is, with the factory running. He estimates that they could prudently and reasonably contract to take over yearly from 50,000 to 55,000 tons of cane unless for unforeseen circumstances, as breakage. Breakages happen oftener than factory-men care to have them; they don't look for them. Such breakages happen in all mills during the season. I understand the word "zafra", or grinding season, to mean until the 30th of June ordinarily, and by that I mean except in cases of force majeure, such as breakages of machinery. It frequently happens that the grinding season is prolonged after the 30th of June, because of breakages. All of June is generally included in the grinding season in the northern part of the Island. The Defendant's mill is located in the

eastern part of the island. By use of the word "ordinarily" above, witness meant unless because of circumstances produced by force majeure—that is, the breakage of machinery. If a cane-farmer had as much as 417-acres of cane in cultivation in the section of Defendant's Company's Factory one year and 108,000 quintals of it were cut in the latter part of June and by the 15th of July or later and there *there* were only 260 acres of that land in cultivation the next year the witness would say that either the farmer had suffered or that through the lack of confidence in the factory he had abandoned his canes. He does not think that it could happen that the roots did not come up, because the factory cut its canes late. The Canovanas factory ground up to July 29, and the canes from those ratoons are being cultivated this year. If such a thing actually occurred it might be due to different circumstances. It may be that the canes were old; he does not know how old they were when

they were cut (Plaintiff's), whether 15 to 16 months, or
 111 whether cut in wet weather. The failure of his cane to sprout might have been that he did not have his land properly drained. The high floods would affect the ratooning of canes to a very serious extent. It may be due entirely to the farmer's neglect. Except in the cases of canes of "gran cultura" a month or 1½ months of delay in cutting canes will not prevent them from re-sprouting. If it is Spring planting a month or two over-standing will not affect them.

Recross:

If it were "gran cultura" and the canes were left there a month or two it would affect the sprouts. The lands from which the Canovanas cut canes up to July 29 was low land and it had to be drained.

ANTONIO ROIG, being called as a witness in behalf of Defendant, testified on oath as follows:

That he lives in Humacao, Porto Rico, and is a merchant and sugar-planter at that place and in the next valley to Defendant Factory and about 20-minutes distant from the same; that he has been in said business for 20 years and always in the same neighborhood. The word "zafra" as used for the grinding season means six months. It is supposed to begin in January and finish in June, but sometimes it runs into July; it includes all of the month of June, six months; it begins in January and lasts until June; it begins after the 6th of January. I am President of the Juncos Factory Company. I live 20-minutes from Defendant's Factory, but from my factory, from my house, it is one hour's ride in a carriage. As a rule the mills in that neighborhood do not finish their grinding in time; they make contracts to grind from January to June, but sometimes they grind in July and August. Witness has ground in August; it depends on the weather, breakage of factory, and other circumstances. He is not connected with the Defendant Company, nor is he a shareholder or office-holder of the same, but he has been

112 to the factory many times. He does not know of his own knowledge what the capacity of the mill is. He has been, and is, a cane-planter. There are 3 kinds of cane crops; what they call

"gran cultura", "pequeña cultura", and ratoons. If ratoons are cut at the end of the season (which is the usual way of cutting them) there is no damage done to the succeeding crop, but if the canes are of "gran cultura" and they are not cut at the start of the crop they suffer. If 250 acres of cane were cut in July and did not come up in August at all it might be due to many causes. If a man who had 417 acres of cane one year and the next year he had only 250 and he said that his cane was cut too late, so that it did not grow again, he might be telling the truth; his cane might have been cut so late that it would not grow again. July is too late for cutting cane, it is rather too late. There may be different causes for the cane not sprouting. The canes must have 12 months from one cutting to another. If they are cut in July and then cut again in March they do not have enough time to grow. Ratoons can be cut in July but sometimes they are not good enough to pay for the expense. If he had a plantation where the ratoons had been left so that they were not good, he would have to abandon them and the ground would be given a rest and then ploughed and planted again. If canes are cut in July the ground can be again planted in October or December, but not for the next year, but for the year after that, but the lands could be planted. The cost of planting an acre in that section may be \$60.00 and it may be \$100.00, it is a thing which varies very much.

TOMAS SUBIRAÑA, being called as a witness in behalf of Defendant, testified on oath as follows:

That he lives in Juncos and is the Manager of the Juncos Sugar-Factory, which is 18 or 20 kilometers from the Defendant's factory. The Juncos Factory ground in 1908 until the 29th of July. Wit-
 113 ness has been in Juncos since April of 1908, and before that was in the sugar business in Ponce, Porto Rico, both as a sugar planter and as a workman. He has been in the sugar business since 1901. In the neighborhood of Juncos and the Defendant sugar factories the word "zafra" means the intervening time between January and the time when the crop ends, six months.

EDUARDO GIORGETTI FERNANDEZ VANGAS, being called as a witness in behalf of Defendant, on oath testified as follows:

Direct examination:

He resides in Santurce, Porto Rico, and at one time was President of the Porto Rico Sugar Company—that is to say, from the time the Company was organized up to the year last passed. He was the first President of the Company. Defendant Company did not renovate the contracts which Plaintiff had with the Humacao Sugar Company and with others, but it accepted them. The word "zafra" is understood in Porto Rico to mean the grinding season. The time of the grinding season depends upon the quantity of cane, the prevailing weather, and interruptions or breakages of machinery. There is no general custom which fixes the season, the "zafra," within definite limits. Some factories finish grinding in May, and others in August. If they do not finish grinding until August it results in

damage to the factory. There is no damage to the farmer, because those canes could be ground the next year at the same time, or they could be left to what is known as "gran cultura." If canes which are ripe are cut as late as July 20 absolutely no damage whatever is produced to the farmer. Canes in Porto Rico will last 18 to 20 months without losing anything. Witness has been in the sugar business for 21 years and he is the President of the Factory "Plazuela," and is also connected with the Factory "Cambalache" as a shareholder and director.

Witness was asked the following question:

114 "Now, in those two places (factories) what is meant by the word "zafra," and how long do they grind in those two places?" Plaintiff objected to the question, because it is inquiring not about a custom, but about a particular case, and the objection having been sustained by the Court the attorney for the defense noted his exception. According to witness's experience in agriculture canes ground in July do not cause such damages to the crop of next year as are claimed by Plaintiff. The best canes which witness has cut during his life have been planted in July, for the following reasons:

They take the plant of one of this Spring and one of next and so you might say that they are canes which take in two Springs which is the time in which precisely the cane develops more in Porto Rico.

Witness does not think that anybody would lose his canes just for whims. If damage comes after canes are cut in July that depends undoubtedly upon the farmer, because of when he cut those canes they were abandoned, he did not make the proper drainage, because at that time of the year the rainy season sets in, and if he did not replant undoubtedly the crop must be destroyed, but the fact that they were ground in July is not cause of ruin to any farmer, because in that case all of the sugar men in Porto Rico would be ruined now. He has now no interest whatever in the Defendant Company; he has sold whatever stock he had in it.

Cross-examination:

In the month of July, 1908, witness was not the President of Defendant-Company; he vacated prior to the 1st day of July of that year, but does not remember exactly the day: he thinks it was in June; he could not say whether it was the last of June, he could not remember exactly, but he did not finish the grinding season and when he left the principal part of Plaintiff's canes were still left to be ground, as well as those of other farmers. The word "zafra" refers to the whole grinding season without referring
115 to any particular months. Under normal conditions the grinding season depends on the location or coast: on the southern coast they start in the month of December; in the northern and eastern part it generally starts after the 15th of January and it ends in June, July, and sometimes in August. Witness has never lived in Humacao district; the only sugar interests he had there were after the grinding season of 1907 up to June, 1908, He was the principal shareholder in the Defendant-Company, but

not exactly the owner of it, and he has been for a short time interested in the Yabucoa Sugar Company, so that his sugar interests in the eastern part of the Island are not very important. He had only 33 shares of Yabucoa, but he was a large stockholder of Defendant Company. A year ago he sold all of his shares in the Defendant Company, and also those of his family. The grinding season begins in the north and east, as in the district of Humacao, after the 15th of January, or Three Kings' Day, and it ends in June, July and even in August. He understood that the Juncos factory had ground in July. He does not know that it got into trouble because thereof; he does know that it ground in July. The grinding period in the Humacao district, witness understands to cover a period from January to August, but he realizes that it is much better to end the grinding before. Ordinarily the contracts do not specify the months, and that depends upon the quantity of cane and on the interruptions that might occur in the mill. As president of defendant Company, I remember having fixed the time for grinding in one contract with Mr. Faura, which I think is stated to be from February to May, but that was at the request of the Company, by myself. Witness demanded of Mr. Faura more percentage than from the other colonos, and then the Company demanded from Mr. Faura the grinding of his canes from the first of February to the first of May. There may be something in the contract with Saldaña with reference to the same point, but he is not sure. He could not tell whether these two instances were

116 the only ones in which the time was fixed in the contract of the defendant Company, because it is impossible to keep in his mind the contents of all the contracts executed by that Company. He does not recollect the conditions of the Gonzalez Prido contract, nor whether it says from January to June. The non-cutting of cane in the month of July does not damage the next crop to the extent of having to abandon the plantation. He cannot calculate the damages of a farmer who has cane planted at different periods; there are canes which it would be more profitable to grind in July than in May or June. If the land were low and marshy, and such as had to be drained, and the canes were allowed to stand on the ground after they were ripe and until the last days of July, that would not hurt the crop, but to the contrary, because on those lands is the place where the canes thrive better, and this witness is willing to submit to the opinion of any expert in Porto Rico. He knows Mr. Marr. He has never spoken to him with reference to this matter, but he must be an expert. The canes in "Gran Cultura" in Porto Rico are cut after eighteen and twenty months. If canes of "Gran Cultura" are eighteen months old in May, and they are left until July of the year when they should be cut, they would be then twenty months old, and you have the same ratoons from canes of eighteen months as from canes of twenty months. It generally depends on the condition of the cane whether cane shocks which are eighteen months old in May and are not cut until July cause damage to the succeeding crop. There are some canes that after sixteen months should be cut, and there are other canes which after eighteen months are getting better, because that depends upon the acidity

of the soil. Witness stated that he could not answer the question definitely. As in the case of every kind of fruit, as soon as it is seasoned it begins to lose. This is not true of all cane except those of Gran Cultura, and these are cut between eighteen and twenty-two months, but there is a time in the age of Gran Cultura cane, 117 as in the case of all canes, when it is ripe and when leaving it on the ground would injure the next crop. Gran Cultura cane is generally planted from June 1st. The cutting of Gran Cultura cane depends upon the time it has been planted. Its name indicates that it has more time under cultivation than those canes which are planted after the Spring. Those canes which are planted after the month of July are cut, not the next year but the succeeding year, with the canes for grinding, and the Gran Cultura canes are planted after July,—in July, August, September, October, and November, but those canes are not ground the next year but the succeeding year. Those planted in October-November would be Gran Cultura, because they are not ground the next year, but the next. Spring canes are planted from January to June; they are not planted in October or November, because that is not the time.

RAMON NEGRON FLORES, being called as a witness on behalf of defendant, testified on oath as follows:

He lives in Bayamón, and was employed by the Porto Rico sugar factory during the season of 1908, as Manager of the Factory and Chief Officer, and the books of the factory were under his direction. There was an employee of the factory under my orders who was in charge of the receiving of cane, and taking note for it, and witness was the man who gave orders about how much cane to grind and how much cane to bring up. There were 82 railroad cars of ten tons' capacity in use: ten or twelve of them were used for hauling wood, and the rest for bringing up cane. The capacity of the factory was nearly 10,000 quintals. The number of trips which the cars could make daily depended upon the stage of grinding. On the southern side of the factory they made one trip a day, because the distance was longer; and on the northern side they made two trips because it was nearer. There were no places where it was possible for them to make more than two trips a day, owing to the time consumed in loading and unloading. 118 Plaintiff's plantation was on the north side, and under normal conditions the cars could make two trips. Witness did not remember giving an order that the cars should be loaded with only eight tons of cane each, but he did remember giving an order about the loading of cars, because the cars were being loaded very high, and the cane was not placed in the proper manner and that gave rise or caused the cars not to come in under the unloader. If the cars were loaded with ten tons and the cane was well packed, they could come in all-right. Plaintiff's cane were, as a rule, well packed. Witness had been to the Berrios tract and the track was laid and the engine could go as far as the bridge, which was standing there, but it did not pass over the bridge, because the latter was somewhat weak. The cars passed over when loaded with cane and they were hauled with oxen. He could not estimate the approximate distance, but it was not a very

long distance. There were break-downs in the machinery of the mill in 1908. Yes, there were very many break-downs. He does not remember the time; and could not tell exactly how long they lasted; he could not specify the length of time, even approximately, because the breakdowns were very frequent. When the mill was started the condition of the machinery was such that it could grind well. Witness remembers that there was a fire at the place of one of the farmers; it was that of Mr. Arambura. He does not remember exactly, but he thinks there were thirty acres of cane burned, and on that account orders were issued to the effect that all of the other farmers should stop cutting cane. During a whole week all of the cars were used for the canes of Mr. Arambura, and afterwards, during several days, one-half of the cars were furnished to him, and the balance of the cars were furnished to the other "colonos."

The following question was asked the witness: "Can you tell us what is the custom in such cases, in all of the plantations, when one of the farmers has got his cane burned?"

Counsel for Plaintiff objected to the question, because there is nothing of that kind in the contract; the Court sustained the objection, and Defendant noted his exception.

Two account books of the Company were then placed in evidence and marked Exhibit "A" for the Defendant.

GABRIER SOLER, being called as a witness on behalf of the Defendant, testified under oath as follows:

Witness was handed an extract from the books (Exhibit "A" for the Defendant). He made this extract from those books; it was a correct copy of the entry in the books as far as the dates and amounts are concerned.

Witness RAMON NEGRON FLORES, recalled. Witness was shown the extract testified to by the witness Gabriel Soler, which reads as follows:

Note of Cane Delivered by Bautista Viso During Grinding Season of 1908.

Until June 30,	16,305,889 lbs.
July 1,	lbs. 161,105
" 1,	" 30,180
" 2,	" 336,925
" 3,	" 488,585
" 4,	" 188,255
" 6,	" 285,275
" 7,	" 303,835
" 8,	" 330,655
" 9,	" 343,200
" 10,	" 307,705
" 11,	" 221,925
" 13,	" 172,920
" 14,	" 326,585

" 15,	" 191,515
" 16,	" 212,805
" 17,	" 183,095
" 18,	" 101,075
" 20,	" 134,955
" 21,	" 154,340
" 22,	" 94,570
" 23,	" 8,570

 4,578,075

April 16, 1909.

From this list it appears that Plaintiff delivered canes to the factory to the amount of 4,578,075 lbs. The above extract was then placed in evidence and marked Exhibit "B" for Defendant.

120 Cross-examination:

Witness was employed at the Defendant's factory from June, 1907, up to the end of the grinding season of 1908. He is not a sugar man and yet he was the Manager of that concern. There were several engineers. The first one was James Boyd, but witness could not judge whether he was a competent engineer. He left the factory because of the interruptions which happened in the grinding; he was not discharged, he resigned. Mr. Besser succeeded him, and he died after having been a short time in the factory. He died at his private residence. There was a tank of water there and he got beneath it to fix it and it fell on him and he died. Mr. Ledgend is the engineer there at present, but there was another one before him named Ibañez. He stayed there for a few days. He was sent there provisionally, until Mr. Ledgend was appointed. The interruptions in the grinding occurred with some frequency, but witness could not state a fixed time; he could not give the approximate time, nor recollect how many there were. There was one which lasted at least for a couple of weeks, due to the breaking of a piece of the pump. Then there were other interruptions on account of the breaking of a piece of the rollers; that lasted several days. It is possible that it may have been for a week or 10 days or 2 weeks, but he could not give the exact day; he did not think it reached 10 days. From Wednesday of Holy Week the mill suspended grinding because they did not wish to grind during those days when the cane that was on hand was finished. They had to suspend an hour previous to the time they intended to suspend because of lack of wood. That was the only time that this factory was without wood. It is not true that at one time it was suspended for about 10 days for lack of wood. The data in the books would show how many quintals of cane there were on those 30-35 acres of burned cane. There were 30 or 30-odd acres burned.

Witness was here handed Exhibit "B" for Plaintiff. There are blank forms of the Central Office or Headquarters, in which I took no part. The officer of the Company there might understand them. The Central Office or Headquarters had direct dealings with the farmers. Those are the weekly blank forms or statements. The factory ground until the 25th of July, because it could

not finish by the 30th of June, as they thought to do. If Central had had more cars it could not have finished by the 30th of June. It had enough cars to attend to the transportation of the cane and the capacity of the factory was 10,000 quintals of cane per day, more or less. The Management estimated that it had 1,200,000 quintals to grind, so that the factory would have needed 120 working days in which to grind off the crop. It took us 7 months, instead of 4 months to do the work, because of interruptions and frequent breakage in the machinery. It is true that the factory sent Saldaña or Saldaña & Company a larger number of cars for cane than it sent to Plaintiff, although both had about the same amount of cane. At the beginning of the season, having in mind, or having in view the making of an equitable distribution of all of the rolling-stock among the farmers, the President and Secretary of the Company cited all of the farmers to a meeting for the purpose of arriving at an agreement. Plaintiff did not attend that meeting. At that time the brother-in-law of Mr. Saldaña was not the President of the Company. Witness did not know of his own knowledge whether Abelino Vicente is the brother-in-law of Mr. Saldaña, but he did know that there was a partnership of Saldaña & Company and that it was said that Mr. Vicente was one of the partners and Mr. Vicente was the President of the Defendant-Company after Giorgetti and until a few days ago.

GABRIEL SOLER, being recalled as a witness for the Defendant, testified as follows:

Direct examination:

Witness is handed Exhibit "B" for Defendant. In this abstract there are included all of the items which I found in the account of Plaintiff, his daily deliveries, and I think it includes the canes of Plaintiff which were ground at the "Ejemplo" because it was cane delivered by him. Witness referred to the books (Exhibit 122 "A") and then testified: "Yes, this statement includes those canes."

CHARLES THOMPSON PARKER, being called as a witness in behalf of Defendant, testified on oath as follows:

That he lives in Santurce, Porto Rico, and that his occupation is that of Contracting & Consulting Engineer, and that he has been in that profession for 7 years, and visited the factory of Defendant Company in January, 1908. He went there for the purpose of seeing what he thought of the factory and the machinery and what condition it was in. He went there at the request of Mr. Eduardo Giorgetti. That was at the beginning of the grinding season. The machinery seemed to be in good condition generally and the capacity of the mill at that time witness put down at 500 tons per day of 24-hours. It could easily grind that amount of cane. It could do more, but not efficiently. He did not see anything that would indicate any imperfection in the machinery at that time; there was nothing unusual about the state of machinery that would prevent

the mill from grinding. He examined it well; he went through the whole factory.

Cross-examination:

The machinery of the factory was put up pretty much as witness would have put it up. It was put up along the lines to produce the greatest efficiency and safety. He was there perhaps 3 or 4 other times during the season. The subsequent visits to the factory were with the view of prospective business later on after the first visit, with the view of selling machinery to it. He went there once at the request of Defendant Company with a view to changes in the gearing of the mill. The gearing was not such as to be safe to continue on for another season. He considered that the gearing was put up right, and that it was the right kind of gearing, but that it was not perfectly safe to continue on with, as its strength was not sufficient if the mill was to be forced. Sugar-mills run for 24 hours a day, and 500 tons would be about 1100 quintals. Allowing 25 days to the month, which is safe allowance, taking 500 tons by 6 months, and 6 months by 25 by 500 we find the capacity of the mill 110 times 75,000 tons. Grinding regularly, it could have taken off in 6 months about 7,000,000 quintals of cane.

Redirect examination:

The second time that witness went to the factory was in 1908, about the middle of April, and he got the work in changing the gearing and he changed it. It was repaired according to his indications.

ANDRES GARCIA, being called as a witness in behalf of Defendant, testified under oath as follows:

Direct examination:

He lives in Humacao and is one of the farmers of the Porto Rico Sugar Company and a neighbor of Plaintiff. His plantation is on one side of witness. Witness saw the agricultural works and cuttings, etc., which was done on the Plaintiff's plantation during the month of July, 1908. Plaintiff conditioned some parts of his cane in the month of July, 1908 for the crop of 1909; he conditioned the ones that he had to condition; the others, no. He conditioned some ratoons to grind this year, but the rest they did not condition it. The rest did not need any conditioning. Plaintiff had a plantation of 100 acres which they ploughed because the ratoons did not sprout. Witness did not know why the ratoons did not sprout. As a rule, when cane is cut late it does not grow well, but he could not tell how many acres, more or less, of those cultivated in July were in that condition. He knows the plantation which belongs to Plaintiff and which before belonged to Mr. Berrios, and he could tell the condition that the railroad was in on that tract in 1908. The rails ran into that tract approximately 150-meters, but it was not a fixed track, it was a track which was fixed but without ballast.

The bridge there is on the property of Plaintiff. The cars or wagons could pass over the bridge.

Cross-examination:

124 The locomotive could not go in; the engine could not go beyond the bridge, which is at 200 meters from the property of plaintiff; it could — go on, he thinks, because the bridge was not strong enough, but he does not know that of his own knowledge. Witness cuts his canes in the tract alongside of plaintiff's and loaded it on the same switch. The factory finished grinding witness's cane in May, and the ratoons from those canes were in good condition and grew well. Witness's land is similar in quality to plaintiff's land.

Redirect examination:

No one can tell whether if by good cultivation and by draining well plaintiff's cane, which was cut late, could have been made to produce better. It might have grown, but it would not have yielded much.

Testimony in Rebuttal.

BAUTISTA VISO LORENZO, being recalled as a witness in his own behalf, testified as follows:

Direct examination:

Replying to a question as to what he did toward the cultivation of his canes on the 417 acres, after July, 1908, he stated that on the Berrios property he conditioned the ratoons but that they died; they did not spring. They scarcely produced seed and the land had to be replowed. On the other land the cane did not resprout and he had to replot it and plant new canes. Those lands are marshy and when the cane is cut late it does not sprout. The treatment which he gave the land, after the canes were taken off, was the usual treatment in such cases. This consists in giving the land proper conditioning where the cane grew and sprouted, and on the land where it did not sprout he replowed it and replanted it.

Cross-examination:

The Berrios property, consisting of 82 acres, was completely replanted, and also 95 acres of the other property, but the crop from those acres was not for 1909 but for 1910. The 40 acres
125 which were planted late were good for the crop of 1909, and the 201 have been replanted for the next year's crop. He began plowing the land in October (1908) and kept on until May (1909). During the months from July to October he was preparing the land for replowing; you cannot do all of your cultivation at once. The cane which was cut from these 240 acres which were damaged was of the ordinary growth; it was plant cane and ratoons both. The cane which he claims damages for, because it

was cut too late, was twelve, fourteen and fifteen months old. He does not remember how many tons of his cane were cut in July, but there is a note of it here in the case, in the weekly statements of every fortnight. The canes for which he claims were cut out in June and July; the great majority of them were cut in July. He has presented the receipts of the factory which show that. One hundred and eight thousand (108,000) quintals were ground in June and July. He cannot say how many acres of cane were cut in July of 1908.

RAMON NEGRON FLORES, being recalled by defendant to make a correction in his former testimony, testified as follows:

Direct examination by Defendant:

That he went to the place where the cane was burned and saw the extent of the fire. He wishes to make a correction of his testimony given this morning. He then stated that there were 30 acres of cane burned, whereas there were 130. He did not personally measure them and he knows this from information furnished him by interested parties who went to the ground and estimated it. This morning he was confused and he thought that 130 acres were too much, but he afterwards realized that cane from 30 acres could have been ground in two or three days and that the interested party delivered cane for a week with all the cars of the factory and during another week with one-half the cars. This morning he had it in his mind that it was 30 acres; he knows now that was 130 because of the information given him as the result of the investigation
 126 carried out by his orders. Nobody told him this morning that it was 130 instead of 30 acres, but he remembers that there were 50,000 quintals delivered. As he now recollects it, the cane on the 130 acres of land was a part of the 1,200,000 quintals contracted for, the total amount of the cane which the factory was to grind according to the calculation which was made.

Court's Instructions to the Jury.

GENTLEMEN OF THE JURY: Because this case ends in the middle of an afternoon this way the Court has not had time and opportunity to write instructions, and hence I won't speak to you as connectedly as I would if I had them written out for you, but with your kind attention I will state a few propositions of law that will aid you. Counsel on both sides of this case have very properly and very intelligently stated several propositions of law that the Court has no dispute with. None of them have misstated any proposition of law as the Court believes it.

Now, gentlemen, your duty begins in this case, and it is the hardest duty of all, to settle, first if there is any damage, and if so, the amount of it. The Court need not warn you that these people have exactly equal rights before you. The fact that one is an individual and the other a corporation should cut no figure in the determination of your verdict. They are entitled to an exactly equal

show before you as an arm of this court and I am sure they will receive it at your hands. Let us throw out of our minds all prejudice, and when you find the facts, then apply the law to them as here given you, and fearlessly render your verdict. Let it not make any difference whether you are acquainted with the counsel on either side or whether you are acquainted with the parties. Don't hesitate to give your verdict as right and justice may suggest and warrant it. If this plaintiff is entitled to the damages he claims, you should find for him, and if he is not entitled to them, then the defendant is entitled to have you stand between it and that man's claim, and you should with equal courage say that there is no damage, and find for the defendant.

This suit is brought by this plaintiff Bautista Viso Lorenzo against the Porto Rico Sugar Company, and the complaint sets out that this Puerto Rico Sugar Company is the successor of what was the Humacao Sugar Company and that it took over the contracts that this plaintiff made with that former concern. There is no point made of that. The defendants admit it and they are defending here on the same ground.

Now the plaintiff sues here in this complaint for thirty thousand dollars. The complaint has been amended and the amount changed from twenty-three thousand to thirty thousand, and when you take it to your jury room you will see that I have written in the corrected amount with blue pencil. The final claim is put down at thirty thousand dollars.

There are a good many contracts here for the grinding of the plaintiff's sugar cane at the defendant's sugar mill, and they are indefinite, as you will see when you look at them, with reference to the time. To put it in plain English, it says that they will grind this cane during so many years and there is practically nothing said about what particular month or time it will be ground in. The exact language of one of them that I have here is as follows, and you may take them all to your jury room and examine them: "The term of the present lease is that of five crops of zafras counting from the thirty-first of December last to which date the parties hereto date back the effect of the present deed, and shall terminate at the end of the crop of nineteen hundred and twelve."

Now, gentlemen, it is a well known rule of law that counsel here both admit, that whenever people contract with reference to a particular trade or calling, even though to the ordinary mind there is no ambiguity about the contract, yet if there are words in it that

128 have a particular meaning, then the Court and the Jury can receive evidence to know what is meant by that particular word in that particular trade. For instance, in railroading the word "trip" may have a special meaning and the railroad men would know and understand it in that way. And the crop of cane and the grinding season in Porto Rico has no doubt a particular meaning and the evidence has been put before you to show what it meant. Now, some of the evidence shows that the grinding season for the crop of cane is from January to the end of May, and more evidence shows that it is from January to the end of June and

more shows that it extends into July and August. And it is for you to say, gentlemen, from a preponderance of the evidence what was meant by the parties here, and to give it a reasonable construction.

When two parties make a contract involving a large amount of money, it is not presumed that they in contracting intended to injure either the one or the other, and therefore jurors must look at these things as reasonable men, as they would do were the case their own, and not be governed one way or the other except by reason. And if you believe from a preponderance of the evidence that a custom does exist in this community and that these parties had it in mind in making these contracts, you may consider it. And the law says that they did have it in mind if they said nothing about it because Section 1254 of the laws of this Island uses this language: "The uses and customs of the country shall be taken into consideration in interpreting ambiguity in contracts, supplying in the same the omission of stipulations which are usually included." So you will see that the law says that when they don't say anything about it, the ordinary custom of the country must be included in that contract; and the further warning of the Court is that the parties will not be presumed to have intended injury to one or the other.

Then there is a further proposition of the law, which is Section 1074, which reads as follows: "The losses and damages for which a debtor in good faith is liable are those foreseen or which may have been foreseen at the time of constituting the obligation, and
129 which may be a necessary consequence of its non-fulfillment."

Therefore if you should find for the plaintiff here, you could not go to any chimerical extent in finding damages for him. You must confine yourself to the damages which would reasonably be considered to have been in the contemplation of the parties and to have been foreseen from the non-fulfillment of the contract on either side.

First, you must believe from a preponderance of the evidence that the plaintiff was in fact damaged, and second, that that damage was caused by the wrongful act of this defendant, and if you believe that from a preponderance of the evidence, then you should find for the plaintiff. And if you do not so determine, you should find for the defendant and rule no damage at all.

The damages have been calculated upon the loss of crop from a certain number of acres for the year 1909 and the cost of cultivating. All of the papers are before you and you can figure it out for yourselves. Counsel have so succinctly explained it that I do not need to go into it.

The question of whether the plaintiff warned the defendant or protested during the cutting of his cane that he was not getting it off fast enough or was not getting cars enough is a circumstance. All of those things go to show whether the plaintiff waived any of the acts of the defendant, and if you should find from those papers that he did not waive any of them and that in fact his cane was cut at such a late time and so far out of the ordinary season as that it

did him material damage, you will find for him and assess his damages as may be proper.

Another rule that was stated by counsel is that when one does injury to another, that person cannot lie back and allow those damages to creep up. It is his duty to keep the damages down. Therefore it was this plaintiff's duty, if he was damaged, to work his land and cultivate his crop. But, as was also stated by counsel, there is no obligation on him to get out and borrow money
 130 for that purpose, but if he did everything in reason to keep the damages down, then he is excused; but if he did not, he cannot charge those increased damages against the defendant in this case.

I think I have covered everything. The points are very few in this case, gentlemen, and now all I desire to say to you is that in weighing the evidence in this case, consider the manner of the witnesses on the stand and their interest in the case or in a verdict at your hands, and you may take into consideration the interest of the parties and their connection with the different concerns in order to arrive at the weight of their testimony.

Only two forms of verdict will be given you because there are only two possible forms of verdict to be returned here. One will read: "We, the jury, find for the plaintiff and assess his damages at the sum of \$——. ——, Foreman. And the other will read: "We, the jury, find for the defendant. ——, Foreman." When you have arrived at a verdict, you will cause one of your number selected for that purpose, to sign it as foreman and then all of you must return it into court.

The court will give you to take to your room the complaint and the answer, the two forms of verdict and all the exhibits introduced in the case of every kind and character.

The COURT: Are there any other points that counsel think of?

Mr. HORD: I ask your Honor to instruct the jury that if they find for the plaintiff, they may also assess interest on the sum at six per cent per annum from the date that the damage began.

The COURT: No, I will not instruct that. They may simply find a lump sum and the Court will attend to the question of interest on the judgment.

Mr. BOERMAN: The Court didn't say anything about remote damages.

The COURT: Yes, I instructed them that the natural consequences which would flow from it were the only ones which could be considered by them.

131 Gentlemen, as this is a civil case, you only have to find here by a preponderance of the evidence. It is not proper for one of you to go off in the corner and sit down and say nothing, but it is intended that you will get together and balance your opinions and bring the others around to your way of thinking or become convinced by them. Nothing that I have stated is intended to change your views one jot or to coerce or cause one of you to change your views in any manner if you believe that injustice would be done by

so doing, but simply that reason and common sense will control you in your jury room.

Mr. HORD: I ask an exception to the refusal to charge as requested as to interest and as to Sec. 1073 of the Civil code, and also an exception to the refusal to give the written instructions requested.

Mr. BOERMAN: I ask an exception to the refusal to give the written instructions requested.

*Instructions to the Jury Requested by Counsel for the Defendant,
Together with the Rulings Thereon by the Court.*

The defendant company requests the Court to instruct the jury as a matter of law:

1.

That the contracts offered as testimony between the plaintiff and the defendant company do not contain any clause specifying the 30th of July as the end of the grinding season.

The Court refused and defendant excepted.

2.

That if the jury believe that the word "zafra" or sugar campaign is the customary of the month from January to the end of June, that still two weeks more or less would not constitute a
132 breach of contract on the part of the defendant.

The Court refused and defendant excepted.

3.

That if the jury from the evidence believe that the delay causing the grinding in July was by itself caused by some unforeseen events as breakage of machinery (otherwise in good condition), that then the delay in grinding up to July is excusable and not a breach of contract on the part of the defendant.

The Court refused and defendant excepted.

4.

That if the jury believe from the evidence that established custom amongst the planters is that in case of fire in the cane plantations all facilities of the sugar mill shall be given to the damaged plantation and that any delay was caused by a fire in one of the plantations which delivered to the defendant company, that then this delay is excusable and not a breach of contract on the part of the defendant.

The Court refused and defendant excepted.

5.

That if the jury believe from the evidence that the defendant company contracted only for an amount of cane which it could reasonably grind during the season save for unforeseen breakages or other events which could not be foreseen, that then there was no breach of contract by grinding in July and they should find for the defendant.

The Court refused and defendant excepted.

6.

That if the jury believe from the evidence that the plaintiff could have prevented any loss to himself by planting or replanting those acres, the cane of which was cut in July, and did not do so, that then the plaintiff is not entitled to recover and they should find for the defendant.

The Court refused and defendant excepted.

133

7.

That the delivery of the cane by the plaintiff to the defendant company during the month of July constitutes a waiver and a consent by him to the grinding in July and that therefore he cannot recover any damages therefore.

The Court refused.

8.

That the damages which may have occurred to the plaintiff or occur in future after the season of the year 1909 cannot be charged against the defendant company, because they are too remote, and therefore as to these damages they should find for the defendant.

The Court refused and defendant excepted.

9.

That if the jury believe from the evidence that defendant company had sufficient cars given to the plaintiff to conduct his cane to the factory and that he himself did not use them to the full capacity which they could carry, that then they should find for the defendant as far as this part of the damages claimed by the plaintiff is concerned.

The Court refused and defendant excepted.

10.

That if the jury believe that together with the custom of grinding from January to the end of June, there is also a custom to help any of the neighboring planters to deliver to the same central their canes in case of a fire, that then any delay caused by such fire should not be charged to the defendant company, and that as to that part of the damages they should find for the defendant.

The Court refused and defendant excepted.

11.

That the plaintiff could not stand by and do nothing to save any loss probable from the late cutting of the cane, but that it was his duty to save himself from any loss by planting as soon as possible or replanting as soon as possible that part which was so damaged by the late cutting, and that if the jury believe from the evidence that the plaintiff did not act reasonably in preventing such loss, that then they should find for the defendant.

The Court refused and defendant excepted.

12.

That the defendant was not compelled to deliver to the plaintiff

any specified kind of cars for conducting the cane, and that if the jury believe from the evidence that a portable railroad served the purposes as well as a fixed one, that then the defendant company by furnishing such to the plaintiff had fulfilled its contract, and that therefore the plaintiff cannot recover for that particular.

The Court refused and defendant excepted.

13.

That if the jury believe from the evidence that customarily the grinding season continues up to the 30th of June, but that it is also customary in a great number of sugar mills in the neighborhood of the Porto Rico Sugar Mill to grind up to July, that this then would constitute a part of the custom and that then the plaintiff could not recover for any delay or grinding partly in July.

The Court refused and defendant excepted.

14.

That as a matter of law a contract means the meeting of two minds of the contracting parties upon the same subject matter and that if there is no evidence that both parties to the contract have interpreted the word "zafra" or grinding season to grind from January up to the 30th of June, that then there was no such contract without the meeting of both minds to that effect.

The Court refused and defendant excepted.

The foregoing is on this October 7, 1909, during the April Term 1909 of this Court, in presence of counsel for the respective parties, duly settled and signed as a true and correct Bill of Exceptions taken during the trial of the said above mentioned cause, and the same is hereby ordered to be filed and made a part of the record for transmittal to the Honorable the Supreme Court of the United States.

B. S. RODEY, *Judge*.

136

Præcipe for Transcript of Record.

(Filed September 15, 1909.)

No. 610. Law.

BAUTISTA VISO LORENZO

vs.

THE PORTO RICO SUGAR COMPANY.

The Clerk will please prepare, certify and transmit to the United States Supreme Court a complete record of the above entitled cause, including all the pleadings with exhibits attached to them, if any, or referred to in them, petition for a bill of particulars, all the decisions of the Court on demurrers, judgment, motion for a new trial and order thereon, petition for a writ of error and order thereon,

writ of error, assignment of errors, bill of exceptions, approval thereof, bond, citation with its return and this præcipe.

C. M. BOERMAN,
Attorney for Plaintiff-in-Error.

137

Amendment of Præcipe for Record.

(Filed September 20, 1909.)

BAUTISTA VISO LORENZO
vs.
PORTO RICO SUGAR CO.

Please to insert in Record also the exception to allowing amendment of complaint increasing damages to \$30,000, which was filed in writing by the defendant.

C. M. BOERMAN,
Att'y for Deft.

138 In the District Court of the United States for Porto Rico.

No. 610. Law.

BAUTISTA VISO LORENZO, Plaintiff,
vs.
THE PORTO RICO SUGAR COMPANY, Defendant.

I, John L. Gay, Clerk of the District Court of the United States within and for the District of Porto Rico, do hereby certify the foregoing one hundred and thirty-seven typewritten pages, numbered from 1 to 137, inclusive, to be a true and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said Court, and that the same constitute the return to the annexed writ of error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this first day of November, A. D. 1909.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
*Clerk District Court of the United
States for Porto Rico.*

139

Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judge of the District Court of the United States for Porto Rico, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before

you, between Porto Rico Sugar Company, plaintiff in error, and Bautista Viso Lorenzo, defendant in error, a manifest error hath happened, to the great damage of the said Puerto Rico Sugar Company, plaintiff in error, as is said and appears by the petition herein.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, District of Columbia, on the Ninth day of November next, in the said Supreme Court of the United States, that the record and proceedings aforesaid being inspected, the said Supreme Court of the United

States may cause further to be done therein to correct that
140 error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this tenth day of September, in the year of our Lord one thousand nine hundred and nine.

Attest my hand and the seal of the District Court of the United States for the District of Porto Rico, at the Clerk's Office at San Juan, Porto Rico, on the day and year last above written.

[Seal United States District Court for the District of
Porto Rico.]

JOHN L. GAY,
*Clerk of the District Court of the
United States for Porto Rico.*

Allowed this the tenth day of September, 1909.

B. S. RODY,
*Judge of the District Court of the
United States for Porto Rico.*

141 [Endorsed:] No. 610 Law. In the District Court of the United States for Porto Rico. Bautista Viso Lorenzo vs. Puerto Rico Sugar Company. Writ of Error. Certified copy of the within Writ of Error filed in clerk's office Sept. 13, 1909. J. L. Gay, Clerk, by A. M. Bacon, Deputy. Filed, clerk's office, United States District Court, Sept. 10, 1909. John L. Gay.

142 *Citation.*

UNITED STATES OF AMERICA, ss:

The President of the United States to Bautista Viso Lorenzo, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C. within sixty days from the date thereof, pursuant to the writ of

error filed in the office of the Clerk of the United States District Court for Porto Rico, wherein the Porto Rico Sugar Company is plaintiff-in-error and you are defendant-in-error, to show cause, if any there be, why the judgment rendered against the said plaintiff-in-error as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Bernard S. Rodey, the Judge of the United States District Court for Porto Rico, on the 10th day of September, 1909, and of the Independence of the United States the one hundred and thirty fourth.

B. S. RODEY, *Judge.*

Attest:

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk Dist. Court of U. S. for P. R.

142½

Return on Service Writ.

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed Citation on the therein-named Bautista Viso Lorenzo by handing to and leaving a true and correct copy thereof with Henry F. Hord, att'y for said Bautista Viso Lorenzo personally at San Juan in said District on the 13th day of Sept., A. D. 1909.

H. S. HUBBARD,
U. S. Marshal.
FRED E. BURNETT,
Deputy.

143 [Endorsed:] #610. Law. Bautista Viso Lorenzo vs. Porto Rico Sugar Company. Citation. Filed Clerk's Office, United States District Court, Sept. 15, 1909. John L. Gay.

Marshal's Fees.

1 Service	\$2.00
Expenses	

Endorsed on cover: File No. 21,895. Porto Rico D. C. U. S. Term No. 639. The Porto Rico Sugar Company, plaintiff in error, vs. Bautista Viso Lorenzo. Filed November 9th, 1909. File No. 21,895.

12
Office Supreme Court, U. S.
FILED.

DEC 3 1910

JAMES H. MCKENNEY,

Supreme Court of the United States.

OCTOBER TERM, 1910.

THE PORTO RICO SUGAR COMPANY,
Plaintiff in Error,

v.

BAUTISTA VISO LORENZO.

No. 154

IN ERROR TO THE DISTRICT COURT OF THE
UNITED STATES FOR PORTO RICO.

Brief and Argument for Plaintiff in Error.

C. M. BOERMAN,
Of Counsel for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1910.

THE PORTO RICO SUGAR COMPANY,
Plaintiff in Error,

v.

BAUTISTA VISO LORENZO,
Defendant in Error.

No. 361.

In error to the District Court of the United States for
Porto Rico.

BRIEF ON BEHALF OF PLAINTIFF IN ERROR.

I.

Statement.

This case comes up to this Court by a writ of error issued to the United States District Court for Porto Rico to review a judgment entered in that Court in favor of the defendant in error in this case, plaintiff in the lower Court.

The complaint of the said plaintiff alleged in substance that the defendant, The Porto Rico Sugar Company, has assumed certain contracts entered into between the said plaintiff and between other parties, "hereinafter set out," and has obligated itself to comply with the same. That those contracts obliged the defendant to grind during a number of years the cane

planted by the plaintiff on his plantations. That the defendant Company did not grind all of those canes of the plaintiff which it was able to handle, during the months of January to June, 1908, but continued grinding said canes after that date and that the canes thus ground were, because of said delay, reduced in value and in production of sugar. That the defendant Company did not supply the plaintiff with the necessary means of transportation for the canes, and that by the delay caused thereby in the grinding of the canes the plaintiff suffered also a loss. The plaintiff therefore asked damages in the sum of \$23,000.00, which sum the plaintiff was allowed afterwards by the Court to increase by amendment to the amount of \$30,000.00 (Record, folios 2 to 5 and folio 33).

Although the plaintiff stated in his complaint that the contracts referred to in the said complaint are "hereinafter set out" they were not at first added to or inserted in the complaint or exhibited with it. The defendant therefore filed a demurrer (Record, folio 28) and a motion for a Bill of Particulars (Record, folio 29); the Court thereupon ordered the plaintiff to file all of the contracts mentioned in the complaint within five days (Record, folio 30).

The defendant Company then filed a general demurrer to the complaint for want of cause of action (Record, folio 30) and also an answer to the complaint, in which answer the defendant specifically denies that it was by said contracts obligated to grind during the months of January to June of 1908. The defendant also denies the loss and damage alleged in the complaint to be done by the defendant to the plaintiff and further denies any act or omission by the defendant which caused any loss to the plaintiff. It further denies that it had refused to carry out the said contracts or that it did not supply the necessary means of transportation for the canes, or that it delayed the grinding of the canes (Record, folios 31 and 32).

Thereupon the Court permitted the plaintiff to increase by

amendment of the complaint the amount of damages claimed from \$23,000.00 to \$30,000.00 to which order of the Court the defendant Company filed an exception (Record, folio 33).

The Court after hearing the arguments on the demurrer to the complaint overruled the same (Record, folio 34), to which action of the Court the defendant then and there duly objected and excepted.

A trial by jury having been had, the jury gave a verdict for the plaintiff for the sum of \$15,000.00, and after a motion for a new trial presented by the defendant Company had been overruled by the Court, a judgment was entered by said Court in favor of the plaintiff (Record, folios 38 and 39). A writ of error has been then sued out by the defendant, after filing an assignment of errors, by which writ the case comes up before this Court.

II.

Errors Referred to in this Brief.

1.

The lower Court erred in overruling the demurrer of the defendant to the complaint.

2.

The Court erred in overruling the motion of the defendant for a non suit at the conclusion of the plaintiff's testimony.

3.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness Bautista Viso Lorenzo upon the trial: "Can you tell the jury or can you not, what is meant by the grinding season in Porto Rico?" to which action of the Court defendant by its counsel then and there excepted.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness Bautista Viso Lorenzo upon the trial: "Mr. Viso, what do you understand by the grinding season stated in those contracts, the "cosecha" stated in that contract; what do you understand by that clause, to which action of the Court defendant by its counsel then and there excepted.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness José Ramon Gallard upon the trial: "Do you know how many quintals of cane the land of Mr. García produced in 1909?" to which action of the Court defendant by its counsel then and there excepted.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness José Ramon Gallard upon the trial: "What kind of cane, good, bad or indifferent, grew on Mr. García's land for the crop of 1909 from the ratoons of 1908," to which action of the Court defendant by its counsel then and there excepted.

That the Court erred in sustaining the objection of plaintiff's counsel to the following question asked the witness Jose Ramon Gallard on cross-examination: "Now, isn't it a fact that it is the custom among "colonos" here in Porto Rico that when one "colono" has got his cane burned, that all the other colonos mutually help him to cut it and save loss in order that all the others will do the same by him." To which action of the Court, defendant by its counsel then and there excepted.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness Juan Palau upon the trial: "And the second year?" To which action of the Court, defendant by its counsel then and there excepted.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness Juan Palau upon the trial: "Now, what do you estimate the damage for the second year." To which action of the Court, defendant by its counsel then and there excepted.

That the Court erred in not allowing the following question to be asked the witness Juan Palau on cross-examination: "You just said that it cost \$25.00 or more to plant. On what do you base that? Now give us that in detail." To which action of the Court defendant by its counsel then and there excepted.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness Juan Mendizabal upon the trial: "Now what damage would he have suffered the second year?" To which action of the Court, defendant by its counsel then and there excepted.

That the Court erred in admitting in evidence the protest in writing which was marked Exhibit "E" for the plaintiff, to which action of the Court, defendant by its counsel then and there excepted.

13.

That the Court erred in admitting in evidence the protest in writing, which was marked Exhibit "E" for the plaintiff, without a translation into the English language.

14.

That the Court erred in overruling the objection of defendant's counsel to the following question asked the witness Julio Gay upon the trial: "Doesn't it have six or seven or eight suitsevery year for that reason?" To which action of the Court, defendant by its counsel then and there excepted.

15.

That the Court erred in sustaining the objection of plaintiff's counsel to the following question asked the witness Eduardo Georgetti upon the trial: "Now, in these two places what is meant by the word 'zafra,' and how long do they grind in those two places." To which action of the Court, defendant by its counsel then and there excepted.

16.

That the Court erred in sustaining the objection of plaintiff's counsel to the following question asked the witness Ramón Negrón Flores upon the trial: "Can you tell us what is the custom in such cases in all the plantations when one of the "colonos" has got his canes burned." To which action of the Court, defendant by its counsel then and there excepted.

17.

That the Court erred in refusing the following instructions asked for by the defendant: "That the contracts offered as testimony between the plaintiff and the defendant Company

do not contain any clauses specifying the 30th of July as the end of the grinding season." To which action of the Court, defendant by its counsel then and there excepted.

18.

That the Court erred in refusing the following instructions asked for by the defendant: "That if the jury believe that the word 'zafra' or sugar campaign is the customary of the month from January to the end of June, that still two weeks, more or less, would not constitute a breach of contract on the part of the defendant." To which action of the Court, defendant by its counsel then and there excepted.

19.

That the Court erred in refusing the following instruction asked for by the defendant: "That if the jury from the evidence believe that the delay causing the grinding in July was by itself caused by some unforeseen events as breakage of machinery otherwise in good condition, that then the delay in grinding up to July is excusable and not a break of contract on the part of the defendant." To which action of the Court, defendant by its counsel then and there excepted.

20.

That the Court erred in refusing the following instruction asked for by the defendant: "That if the jury believe from the evidence that established custom among the planters is that in case of fire in the cane plantation all facilities of the sugar mill shall be given to the damaged plantation and that if any delay was caused by a fire on one of the plantations which delivered to the defendant Company, that then this delay is excusable and not a breach of contract on the part of

the defendant." To which action of the Court, defendant by its counsel then and there excepted.

21.

That the Court erred in refusing the following instruction asked for by the defendant: "That if the jury believe from the evidence that the defendant Company contracted only for an amount of cane which it could reasonably grind during the season, save for unforeseen breakages or other events which could not be foreseen, that then there was no breach of contract by grinding in July, and they should find for the defendant." To which action of the Court, defendant by its counsel then and there excepted.

22.

That the Court erred in refusing the following instruction asked for by the defendant "That if the jury believe from the evidence that the plaintiff could have prevented any loss to himself by planting or replanting those acres, the cane of which was cut in July, and did not do so, that then the plaintiff is not entitled to recover and they should find for the defendant." To which action of the Court, defendant by its counsel then and there excepted.

23.

That the Court erred in refusing the following instruction asked for by the defendant: "That the delivery of the cane by the plaintiff to the defendant company during the month of July constitutes a waiver and a consent by him to the grinding in July and that therefore he cannot recover any damages therefor." To which action of the Court, defendant by its counsel then and there excepted.

24.

That the Court erred in refusing the following instruction asked for by the defendant: "That the damages which may have occurred to the plaintiff or occur in future after the season of the year 1909 cannot be charged against the defendant Company, because they are too remote, and therefore as to these damages they should find for the defendant." To which action of the Court, defendant by its counsel then and there excepted.

25.

That the Court erred in refusing the following instruction asked for by the defendant: "That if the jury believe from the evidence that defendant Company had sufficient cars given to the plaintiff to conduct his cane to the factory and that he himself did not use them to the full capacity which they could carry, then they should find for the defendant as far as this part of the damages claimed by the plaintiff is concerned." To which action of the Court, defendant by its counsel then and there excepted.

26.

That the Court erred in refusing the following instructions asked for by the defendant: "That if the jury believe that together with the custom of grinding from January to the end of June, there is also a custom to help any of the neighboring planters to deliver to the same central their canes in case of fire, that then any delay caused by such fire should not be charged to the defendant Company, and that to that part of the damages, they should find for the defendant." To which action of the Court, defendant by its counsel then and there excepted.

27.

That the Court erred in refusing the following instruction asked for by the defendant: "That the plaintiff could not

stand by and do nothing to save any loss probable from the late cutting of the cane, but that it was his duty to save himself from any loss by planting as soon as possible or re-planting as soon as possible that part of which was so damaged by the late cutting, and that if the jury believe from the evidence that the plaintiff did not act reasonably in preventing such loss, that then they should find for the defendant." To which action of the Court, defendant by its counsel then and there excepted.

28.

That the Court erred in refusing the following instruction asked for by the defendant: "That the defendant was not compelled to deliver to the plaintiff any specified kind of cars for conducting the cane, and that if the jury believe from the evidence that a portable railroad served the purposes as well as a fixed one, that then the defendant Company by furnishing such to the plaintiff had fulfilled its contract, and that therefore the plaintiff cannot recover for that particular." To which action of the Court, defendant by its counsel then and there excepted.

29.

That the Court erred in refusing the following instruction asked for by the defendant: "That if the jury believe from the evidence that customarily the grinding season continues up to the 30th of June, but that it is also customary in a great number of sugar mills in the neighborhood to Porto Rico Sugar Mill to grind up to July, that this then would constitute a part of the custom and that then the plaintiff could not recover for any delay or grinding partly in July."

30.

That the Court erred in refusing the following instruction asked for by the defendant: "That as a matter of law a con-

tract means the meeting of the minds of the contracting parties upon the same subject matter and that if there is no evidence that both parties to the contract have interpreted the word "zafra" or grinding season to grind from January up to the 30th of June, that then there was no such contract without the meeting of both minds to that effect." To which action of the Court, defendant by its counsel then and there excepted.

31.

That the Court erred in entering judgment for the plaintiff and against the defendant.

32.

That the Court erred in entering judgment dismissing the complaint.

III.

Consideration of the Points of Law Involved.

That this Court has jurisdiction on the appeal is evident from the Record, as the amount involved exceeds largely the sum of \$5,000.00.

Royal Insurance Company *v.* Ruperto Martin, 192 U.S., 149.

The questions of law involved in the consideration of this case, are as follows: First, should any testimony be permitted to vary or add to a written contract, in case said contract is quite intelligible without it and not in any way ambiguous; Second, should evidence as to a custom be admitted in such a case; Third, can a custom be binding if it is not proven to be uniform, settled and fixed; and Fourth, can a custom be proven by opinion of witnesses, or is it to be proven solely by facts of the usage in the locality of the contract.

On account of the numerous exceptions taken during the trial to the rulings of the Court upon the admission or rejection of testimony and to the refusal of the Court to give the in-

structions asked for, and in order to facilitate the argument, we will consider separately: First, the error of the Court in overruling the demurrer of the defendants to the complaint; Second, the errors committed by the Court below in its rulings upon the evidence; and Third, the errors by the Court below in refusing to grant the instructions asked for by the defendant.

(a) THE COURT ERRED IN OVERRULING THE DEMURRER OF THE DEFENDANT TO THE COMPLAINT AND IN NOT DISMISSING SAID COMPLAINT.

The complaint, as can be seen from the Record, folios 2 to 27, contains certain allegations of a breach of contract by the defendant to the damage of the plaintiff. The contracts, *hereinafter set out*, as stated in the second paragraph of the complaint (Record, folio 2) are those copied on the folios 6 to 27 of the Record.

It is alleged in the complaint that the defendant was by said contracts obligated to grind the cane of the plaintiff during the months of January to June of the year 1908, but none of the said contracts contains any clause or any words whatever to that effect, or even indicating that there was any time at all set for such grinding. The clauses of the contract referring to time are the following: (Record, folio 7) "From date of the delivery of the said second crop of canes, the term of lease of the portion of the property, the subject matter of the present contract, shall begin and shall continue for six successive crops and end on the thirty-first of January, nineteen hundred and twelve."

(Record, folio 11) "Third. That the term of the lease mentioned in the foregoing clause shall be for six consecutive crops terminating on the 30th of January, 1912."

(Record, folio 20) "Third. The term of the present lease is that of five crops or "zafras" counting from the 31st of Decem-

ber last to which date the parties hereto date back the effect of the present lease, and shall terminate at the end of the crop of 1912."

(Record, folio 25) "Third. The term of the present contract is that of six crops of "zafras" beginning from January, 1906, to which date the parties hereunto date back the provisions of this deed and shall terminate at the end of the crop for the year 1912."

These are the only clauses referring to the time and it is plainly seen that they do not fix any special months for the grinding of the canes and that the quoted clauses simply fix the term of years, which the contracts between the parties shall run.

Now as the contracts have been made a part of the complaint as seen from paragraph second of the complaint (Record, folio 22), it is clear that, no other contracts having been alleged in the complaint and no notation or change of contract having been therein alleged, the complaint stands and falls by the clauses of the contracts themselves, and that the mere allegations in the complaint of what in the opinion of the plaintiffs said clauses mean, being only conclusions of law and not allegations of fact, must be disregarded and considered as not forming a part of the complaint at all.

Under the Code of Civil Procedure in Porto Rico, facts only are alleged and not conclusions of law, and it has been invariably held by the Supreme Court of California, from which State the Code of Porto Rico was taken, that conclusions of law must be considered as not alleged at all and totally disregarded, even so far as to make unnecessary to answer any such conclusions by traverse or denials.

Callahan v. Broderick, 124 Cal., 80.

Gould v. Evansville R. R. Co., 91 U. S., 536.

Bound v. Griswold, 68 N. Y., 294.

United States v. Ames, 99 U. S., 45.

We submit therefore that the complaint did not allege facts sufficient to constitute a cause of action and that therefore the complaint should have been dismissed upon the demurrer of the defendant thereto.

(b) ERRORS COMMITTED BY THE COURT IN ITS RULING UPON THE ADMISSION OR REJECTION OF THE TESTIMONY.

First. The Court admitted against the objection and exceptions of defendant's counsel the following question, mentioned in the assignment of Errors Nos. 3 and 4 and to be found in the testimony (Record, folios 85 and 86): "Can you tell the jury or can you not, what is meant by the grinding season in Porto Rico?" and "Mr. Viso, what do you understand by the grinding season stated in those contracts, the 'cosecha' stated in that contract; what do you understand by that clause?"

That the admission of said questions and the testimony thereon was erroneous, is evident. First, because the contracts are not in any way ambiguous and do not specify any time whatsoever for the grinding, leaving it to the discretion of the parties to the contract and to the exigencies that the case may require either on the side of the planter, if his canes are not ripe early in the year, or on the side of the factory, which may have more or less cane on hand to grind according to the abundance of the crop.

It is a universal rule of evidence, that parol evidence is never admissible to vary conditions of a contract, or to add to them, or to explain them, where there is no latent ambiguity, or where there is only a patent ambiguity, that is to say where the parties knowingly left the matter undefined, because it is supposed that they did not care to make it more specific and that the so called ambiguity, if there is any, was intentional. We claim that in the case at bar, the parties to the contract knowing the impossibility of fixing the last day, or

week or even month of the grinding season and knowing also the mutual benefit in grinding in as short a time as possible, have left the matter of the length or termination of the grinding season indefinite, so as to submit themselves to the reasonable circumstances of the case.

As can be seen from the testimony offered by both plaintiff and defendant it is to the advantage of both parties, in case it would be possible to do so, to grind the cane during the months of March, April and May, because during that time the cane contains the greatest percentage of sugar. In case cane is cut before the month of March or after the month of May the percentage of sugar is considerably smaller and the loss is mutual, that is to say the loss of the factory that grinds the cane is very large, considerably larger than the loss of the planter. It is also evident that the factory will earn more profits if it can grind the cane in as short a time as possible, because it would thereby economize in coal, wear and tear, labor, etc., and is much more interested in limiting the grinding to as few months and as short a term as possible, and is much more interested in so doing than the planter, and is more damaged by the length, if excessive, of the grinding time than the planter could be.

Therefore the factories in making contracts with cane planters as a rule do not stipulate any special time or months of the year in which they will grind, and both parties purposely leave the time undefined, knowing that it would be impossible for them to specify a special time and that it is to their mutual advantage to conclude the grinding as soon as possible. The want of specifications of the time in the contract is therefore intentional.

“Usage is admissible to explain an ambiguity, but it is never received to contradict what is plain in a written contract. If the words employed have an established legal meaning, parol evidence that the parties intended to

use them in a different sense will be rejected, unless, if interpreted according to their legal acception, they would be insensible with reference to the context or the extrinsic facts. If no such consequence is involved, proof of usage is wholly inadmissible, to contradict or in any wise to vary their effect. In no case can it be received where it is inconsistent with, or repugnant to, the contract. Otherwise it would not explain, but contradict and change the contract which the parties have made substituting for it another and different one, which they did not make. To establish such inconsistency it is not necessary that it should be excluded in express terms. It is sufficient if it appears that the parties intended to be governed by what is written and not by anything else."

Hearne v. Marine Insurance Company, 87 U.S., 492.

"Where the words of any written instrument are free from ambiguity in themselves, and where the external circumstances do not create any doubt or difficulty as to the proper application of the words to the claimants under the instrument, or the subject matter to which the instrument relates, such an instrument, said Tindal, Ch. J., is always to be construed according to the strict, plain, common meaning of the words themselves, and in such cases evidence dehors the instrument for the purpose of explaining it, according to the surmised or alleged intention of the parties to the instrument, is utterly inadmissible. *Shore v. Wilson*, 9 Cl. & F., 565; *Mallan v. May*, 13 Mees. & W., 517.

"All the facts and circumstances may be taken into consideration, if the language be doubtful, to enable the Court to arrive at the real intention of the parties, and to make a correct application of the words of the contract to the subject matter and the object professed to be described, for the law concedes to the Court the same right and information that the parties enjoyed, so far as the same can be collected from the language employed, the subject matter, and the surrounding facts and circumstances.

"Ambiguous words or phrases may be reasonably construed to effect the intention of the parties, but the

province of construction, except when technical terms are employed, can never extend beyond the language employed, the subject matter, and the surrounding circumstances."

Moran v. Prather, 90 U. S., 501.

See also *Garrison v. Memphis Insurance Co.*, 60 U. S. 316, 317.

Besides—

"an alleged usage should not be allowed to control when time is one of the elements, and the period is not definitely fixed."

29 American and English Encyclopedia of Law
2nd, Ed., p. 391, note I.

But even in order to establish a custom, when such testimony of a custom should be admissible under the law, the questions as propounded were not admissible, because they call for an opinion of the witness and not for facts. Custom is established by usage, and the testimony of usage must be testimony of facts, that is to say that parties making such contracts always understand and always invariably have understood certain words or expressions in a certain way, or have always considered a certain condition attached to a contract, but testimony of said usage cannot be given by simple opinions of parties. Facts must be presented showing a general, uniform and fixed usage in order to establish a custom, and opinions which will certainly vary, cannot be admitted at all.

2d. The Court refused to admit the questions asked by the defendant mentioned in No. 15, 16 and 7 of the assignment of errors. The questions were:

"Now in these two cases what is meant by the word 'zafra' and how long do they grind in those two places?" (Record, folio 114).

"Can you tell us what is the custom in such cases in all

the plantations when one of the colonos has got his canes burned?" (Record, folio 119).

"Now, isn't it a fact that it is the custom among colonos here in Porto Rico that when one colono has got his canes burned, that all the other colonos mutually help him to cut it and save loss in order that all the others will do the same by him?" (Record, folio 49).

It will be seen from the ruling on these questions in comparison with the rulings on the same kind of questions asked by the plaintiffs and mentioned before, that the Court was not as liberal to the defendant as it was to the plaintiff in its rulings upon the questions of the existence of a custom.

But, more than that, the question: "Now in those two places what is meant by the word 'zafra' and how long do they grind in those two places?" is in our humble opinion the real proper and only form of question in order to establish usage or custom, because it embodies a question of fact as to how long do they grind in those two places, both places being situated in Porto Rico. And it is from such facts only, that the jury may find that there is a usage or custom, and not from mere opinions of witnesses. Nevertheless the Court overruled the only question which was in proper form, and admitted questions asking for an opinion propounded by the plaintiff. It is clear that the jury has been misled by said opinions, and that real facts, from which they could infer the usage or custom, were withheld from them by the rulings of the Court excluding defendant's questions.

3d. The Court admitted over the objection of defendant's counsel the following question mentioned in the 6th assignment of errors:

"What kind of cane, good, bad or indifferent grew on Mr. Garcia's land for the crop of 1909, from the ratoon of 1908?" (Record, folio 90).

It was evidently inadmissible to prove anything about cane growing on land which was not the plaintiff's.

4th. The Court admitted the questions mentioned in the 8th, 9th and 11th assignment of errors, as follows;

"What do you estimate the damage for the second year?" (Record, folio 95).

"Now, what damage would he have suffered the second year?" (Record folio 97).

Both questions were not admissible, because indicating too remote damages, if any.

5th. The Court excluded the following question mentioned in the 10th assignment of errors; referring to the testimony of witness Palau on the cost of planting an acre of cane:

"On what do you base that, now give us that in detail?" (Record, folio 96).

The defendant was certainly entitled on cross-examination to find out on what facts the witness for the plaintiff bases his estimate of the cost of planting an acre of cane. The ruling of the Court was certainly erroneous, and as it can be clearly seen to the prejudice of the defendant.

* * * * *

The errors of the Court below in its ruling upon the admission or rejection of testimony offered, which have been just discussed by us, are not such small errors, which do not have any influence on the conclusions reached by a jury. To the contrary, these errors were of vital importance on the trial of this case. The Court permitted the plaintiff to establish before the jury that there was a certain custom to grind only up to the month of May by questions calling for opinions of witnesses to which those witnesses answered by giving their opinions. On the other side, when the defendant tried to

establish before the jury facts which could prove or disprove a usage in Porto Rico, from which facts the jury could infer a custom, then just for the reason that the questions called for facts, as can be seen from the objections on the other side and the reasons given in such objections, the Court refused to admit the questions to the prejudice of the defendant. And as this is a very vital question at issue, it can be seen clearly that the defendant was greatly prejudiced in its rights on the trial before the jury, and that the jury did not have before it all the proper evidence offered by the defendant in order to come to its conclusions.

The defendant was also prejudiced by the admission of testimony as to the kind of crops on the land of Mr. Garcia, a neighbor of the plaintiff, and also by the evidence as to the crops of the second year, as these were certainly too remote, as to offer a basis for damages.

The defendant was also prejudiced by excluding on cross-examination questions as to the basis and details of the estimate given by a witness as to the cost of planting an acre of cane. In a suit of this nature for damages details of this kind are of the greatest importance, and of a vast influence in the animus of the jurors, and we submit that the defendant did not have a fair trial of the questions in issue under the rulings of the Court below.

(c) ERRORS COMMITTED BY THE COURT IN ITS RULINGS REFUSING TO GIVE TO THE JURY INSTRUCTIONS ASKED FOR BY THE DEFENDANT.

After having discussed the errors committed by the Court below in its rulings upon the evidence, we will now discuss the errors committed in the instructions by the Court.

We maintain that considering all the evidence offered and admitted, that is to say, all the evidence which the jury had before it, still the jury would not have given a verdict for the

plaintiff, if the Court would not have refused very proper instructions asked for by the defendant.

From the evidence it can be seen, that opinions of witnesses as to the length of the season of grinding cane, which is usual in Porto Rico, greatly varied.

The plaintiff himself testified that he *understood* from the term "cosecha" in the contract that his cane would be ground between January and June (Record, folio 86).

José Ramon Gallardi, a witness for the plaintiff, states that it is from January to the 1st of June (Record, folio 89).

Juan Palau, a witness for the plaintiff, testified that it refers to the time of the year from January to June, including very little of June and nothing of July (Record, folio 95).

Juan Mendizabel, a witness for the plaintiff, testifies that it is between January and June (Record, folio 96).

Abelardo de la Hava Trujillo, a witness for the defendant, testified that it varies according to the weather and the interruptions and breakdowns that might occur in the factory, between January and July, and that it might extend to July and August according to the weather and other conditions (Record, folio 104).

Julio Gay, a witness for the defendant, testified that the word "zafra" means ordinarily from January to July, and that the factory grinds also in July (Record, folio 105).

William Shandon Marr, a witness for the defendant, testifies that ordinarily grinding is finished in June but that some factories do not finish grinding until the end of July (Record, folio 108 and 110).

Antonio Roig, a witness for the defendant, testified that the factories sometimes grind in July and August, right in the neighborhood of the defendant's factory (Record, folio 111).

Tomas Subirana, a witness for the defendant, testified that in the neighborhood of the defendant the word "zafra" means

the intervening time between January and the time when the crop ends, six months (Record, folio 113).

Eduardo Georgetti Fernandez Vangas, a witness for the defendant, testified that in the Northern and Eastern part of the Island the grinding season starts after the 15th of January and ends in June, July, and sometimes in August (Record, folio 115).

(It is within the judicial knowledge of the Court that Humacao, where the defendant's factory is situated, lies in the eastern part of the Island of Porto Rico).

It will also be seen from the testimony that, the witnesses for the plaintiff have only expressed their opinions about the length of the season, not supported by facts, while on the contrary the defendant's witnesses have testified to specific usage in several factories giving facts from which a usage and custom can be inferred, and not simply their own opinions, in most of their testimony.

Upon this testimony the defendant was certainly entitled to the instructions asked for by the defendant and refused by the Court, mentioned in the 29th assignment of errors, to wit:

"That if the jury believe from the evidence that customarily the grinding season continues up to the 30th of June, but that it is also customary in a great number of sugar mills in the neighborhood to the Porto Rico Sugar mill to grind up to July, that this then would constitute a part of the custom and that then the plaintiff could not recover for any delay on grinding partly in July."

It was certainly a grave error, which greatly prejudiced the defendant to refuse such a just and proper instruction, based upon the evidence in the case. And it was also error to refuse the following instructions:

"That the contracts offered as testimony between the plaintiff and the defendant Company do not contain

any clauses specifying the 30th of July as the end of the grinding season (Record, folio 131).

"That if the jury believe that the word 'zafra' or sugar campaign is the customary of the months from January to the end of June, that still two weeks more or less would not constitute a breach of contract on the part of the defendant (Record, folio 132).

"That if the jury from the evidence believe that the delay causing the grinding in July was by itself caused by some unforeseen events, as breakage of the machinery (otherwise in good condition), that then the delay in grinding up to July is excusable and not a breach of contract on the part of the defendant (Record, folio 132).

"That if the jury believe from the evidence that the defendant Company contracted only an amount of cane which it could reasonably grind during the season save for unforeseen breakages or other events which could not be foreseen, than then there was no breach of contract by grinding in July, and they should find for the defendant (Folio 132).

"That as a matter of law a contract means the meeting of two minds of the contracting parties upon the same subject matter, and that if there is no evidence that both parties to the contract have interpreted the word 'zafra' or grinding season to grind from January up to the 30th of June, that then there was no such contract without the meeting of both minds to that effect" (Record, folio 134).

All these instructions were justified and proper, and were not included in the general instructions given by the Court to the jury, and they were therefore improperly refused to the great prejudice of the defendant. The jurors are not supposed to know all the law on a subject, and specific charges, founded upon the evidence and correct as a matter of law, if asked by the party, ought not to be refused.

It was also error for the Court to refuse the instructions specified in the 20th and the 26th assignment of errors, referring to the custom of the planters giving preference to the

canes of a burned plantation because there was uncontroverted testimony before the jury that a fire destroyed a large part of a plantation of one of the colonos, and that the grinding of the canes from the so damaged plantation by the factory has delayed for several days the grinding of the cane of the rest of the plantations, including that of the plaintiff.

There was also a prejudicial error for the Court to refuse the following instructions:

"That if the jury believe from the evidence that the plaintiff could have prevented any loss to himself by planting or replanting those acres, the cane of which was cut in July, and did not do so, that then the plaintiff is not entitled to recover and they should find for the defendant" (Record, folio 132).

"That the damages which may have occurred to the plaintiff or occur in future after the season of the year 1909 cannot be charged against the defendant Company, because they are too remote and therefore as to these damages they should find for the defendant" (Record, folio 133).

The instructions given by the Court to the jury did not cover specifically any of these points. The instructions asked for by the defendant and refused by the Court were the only ones that could throw light before the jury upon the law of the case. The jury not having these instructions from the Court remained totally in the dark as far as these questions are concerned. The parties are certainly entitled that the jury should be instructed upon all the law covering the subject matter of the case and the testimony before them. Otherwise their verdict will be founded upon the facts misunderstood, misconstrued and misinterpreted through the want of the knowledge of the law covering the subject.

We need not demonstrate before the Court the importance of these instructions asked for and refused. They go to the core of the question of the breach of contract, of the existence

of a custom, of the meeting of the minds of the contracting parties, of the amount of damages. A verdict without instructions upon these questions is certainly defective and to be set aside.

* * * * *

In conclusion we will permit ourselves to quote the following lines from the opinion delivered by Mr. Justice Nelson in the case of *Henry Oelricks et al. v. Benjamin Ford*, 64 U. S., p. 49:

“One of the principal grounds of objection to the rulings of the Court, is its refusal to submit the question of usage, which was the subject of evidence on the trial, to the jury. The witnesses introduced by the defendants to prove the usage speak in a very qualified manner as to its existence, as well as to the instances in which they have known it to have been adopted or acquiesced in; and all of them admit they have no knowledge that it was general among the dealers * * * Then as to the precise limit or character of the customs claimed, the opinions of the witnesses are various and indefinite. The margin, they say, must be reasonable, but the pretended usage contains no rule by which a reasonable margin may be determined * * * it would be difficult to describe a custom more indefinite and unsettled.

“But, independently of the total insufficiency of the evidence to establish the usage, we are satisfied, if it existed, the proof would have been inadmissible in the absence of express stipulations, or where the meaning of the parties is uncertain upon the language used, and where the usage of the trade to which the contract relates, or with reference to which it was made, may afford explanation, and supply deficiencies in the instrument. Technical, local, or doubtful words may be thus explained. So where stipulations in the contract refer to matters outside of the instrument, parol proof of extraneous facts may be necessary to interpret their meaning. As a general rule, there must be ambiguity or uncertainty upon the face of the written instrument, arising out of the terms used by the parties, in order to justify the extraneous

evidence, and, when admissible, it must be limited in its effects to the clearing up of the obscurity. It is not admissible to add to or engraft upon the contract new stipulations, nor to contradict these which are plain. (2 Kent. Co., p. 556; 3, p. 260, and note; 1 Greenl. Ev., sec. 295; 2 Cr. and J., 249, 250; 14 How., 445). * * * It was also urged on the argument that this contract was entered into between the defendants and the agent of the plaintiff, with the understanding at the time that it should be subject to the usage; but the answer to this is, that no such usage existed; and if it did, the terms of the contract exclude it. Any conversations and verbal understanding between the parties at the time were merged in the contract, and parol evidence is inadmissible to engraft them upon it."

CONCLUSION.

We, for the reasons given, respectfully submit that the judgment of the United States District Court for Porto Rico in this case be reversed.

C. M. BOERMAN,
Of Counsel for the Plaintiff in Error.

Office Supreme Court, U. S.
FILED.

JAN 2 1912

JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1911.

No. 154.

THE PORTO RICO SUGAR COMPANY,
Plaintiff in Error,

v.

BAUTISTA VISO LORENZO.

Memorandum submitted by leave of the Court of Extracts from the testimony tending to show the existance of a custom in Porto Rico to this effect: *Every contract made by a company for the grinding and manufacture of sugar is by custom to be executed completely within the "zafra" or crop season, which custom, Lorenzo avers, obligated plaintiff in error "to grind during the months of January to June of said year 1908," his entire product.*

The bill of exceptions (Record, pp. 36-87) contains all the testimony offered for plaintiff, and defendant Bautista Viso Lorenzo, Jose R. Gallardi, Juan Palau, and Juan Mendizabal were the only witnesses examined for Lorenzo, who was the plaintiff below. The following extracts contain every scarp of evidence offered by Lorenzo tending to prove the *usage* which he alleged established the *custom* in question.

Bautista Viso Lorenzo said:

"last year the canes were ground *from January to the end of July* that he had received a letter from the defendant's sugar factory reducing the number of cars of his cane to seven," p. 36; "that the expression grinding season (*zafra*) meant the time in which the sugar cane is ground and that that time lasted from January to June, *including June*, but that the roots of the cane in that month do not yield what they should. *That June is included in the grinding season*, but it is not as good a month for grinding as earlier. That his cane which should have been cut and delivered to the factory in May was not delivered and ground until July," p. 41;

"Witness was asked:

"'What is meant by the grinding season in Porto Rico.'

"*Defendant objected because the complaint contains no allegation of custom. Objection overruled and defendant excepted.*" (p. 54.)

[It is well settled that when an objection is made to the admission of the evidence of usage, *in the absence of a proper allegation of such usage in the declaration*, such objection is fatal. See the remarks of this Court on that subject in *Renner v. Bank of Columbia*, 9 Wheat., p. 594. If a party who sues on a written contract desires to modify its terms by establishing a "custom," he must aver the custom; otherwise all proof of it is inadmissible, when objection is duly made. There was a demurrer to the declaration in addition to the objection to the admission of the evidence in the absence of a proper averment.]

"The witness continued:

"The word '*zafra*' means the time within which the sugar cane is ground. If the grinding is not done

before July it might cause a reduction in the crop of three or four or five hundred quintals not only in the ratoons, but also in the new planting," Record, p. 54; "*He understood from the term 'cosecha' in the contract that his cane would be ground between January and June. The custom of the defendant central with other sugar planters who ground their canes at the factory, for instance Saldafia & Company, to grind the canes from January to June. It is the custom of that factory to consider the grinding season from January to June; last year they finished in June,*" p. 55.

On cross examination Lorenzo admitted that—

"The defendant company ground the canes of some of the cane planters in July," p. 56.

He then said:

"The Humacao Sugar Company, of which the defendant is the successor, finished grinding its canes before the end of the grinding season. It finished in June and in the previous years it had very little cane to grind. It had never ground canes in July and it had only been grinding canes since the previous year," p. 56.

Thus it appears that Lorenzo, the plaintiff below, only narrated his personal opinions and personal experiences. *Never once did he allege the existence of a generally accepted and well understood USAGE, such as would support the existence of the CUSTOM upon which alone his suit depended.*

Jose Ramon Gallardi said:

"that plaintiff finished delivering his canes to the defendant company on the 25th of July; that the usual time in that district for grinding canes is from January to the first of June, and that canes ground

after that date do not produce good results because they do not contain the same amount of sucrose or sweet," p. 57.

On cross examination he said:

"That he is a mayordomo for plaintiff and has been so for four years and four months, or from the beginning of 1907, and that the canes were always ground up to the beginning of June. *Some of the factories grind canes in July and even in August, but it is not proper,*" p. 58.

Juan Palau said that he—

"knows what is meant in Porto Rico by the expression 'zafra,' that expression refers to the time of the year from January to June, including very little of June and nothing of July; if land is planted in cane and the cane is not cut until the latter part of July the succeeding crop produces very little," p. 61.

Juan Mendizabal said:

"I know what the expression 'zafra' means in that district; it means that they begin grinding in January and end in May or during the early part of June," p. 62.

On cross-examination he said:

"In July, 1908, I was in Juncos. There is a sugar factory at Juncos, also. Witness does not know the difference in kilometers from plaintiff's plantation to Juncos; the distance is not very great from Juncos. *They also ground canes in July that year at Juncos,*" p. 63.

Neither the plaintiff below, nor any of his witnesses ever, even once, alleged the existence of a general or well known USAGE, such as would support the existence of the CUSTOM upon which alone Lorenzo's suit depended. Therefore when plaintiff rested "defendant made a motion for a non-suit which being overruled defendant excepted," p. 66.

The witnesses for the defendant below, The Porto Rico Suagr Co., testified as follows:

A. H. Trujillo said—

"the time included or covered by the word 'zafra' is variable. It varies according to the weather and interruptions and break-downs that might occur in factory between January and July."

On cross-examination—

"when witness said that the time was variable in that district he meant that some factories in that section had ground up to July, inclusive. If witness was speaking to a 'colono,' or sugar farmer about the word 'zafra,' without referring to any particular case, it would be understood that it meant the grinding season, *which might extend to July and August*, according to the weather and other conditions. Cane does not get over-ripe *before July and August*; it depends upon the time when planted; there might be cane which would be just right at that time. HE HAD NEVER KNOWN A CONTRACT FIXING THE GRINDING PERIOD; it depends upon the locality whether rains set in in July; and sometimes in June, so that the canes are not fit to grind. Sugar factories grind in August because of some break-down in the machinery of the plant, or for some strange reason, and when the weather has prevented it," pp. 66-67.

Julio Gay said—

"the word 'zafra' means in the community from January to July. The Juncos factory since its establishment has never finished grinding its cane in June but has kept on until July and other factories have also ground in July. *I am well acquainted with cane planting; it is my trade. If cane is cut in July and the weather is good nothing happens to it, it produces no effect on the cane at all. The farmer does not lose anything, because the cane continues growing and weighs more.* * * * I say that the grinding season is understood to mean until July, because the Juncos Central has not up to date finished grinding before July, and he knows of many other factories which have done the same. The Juncos Central this year will grind into July," pp. 67-68.

W. S. Marr said that—

"generally speaking, if one were told that a certain person would be in Porto Rico during the grinding season, one would expect to see him some time from the month of January to the month of June. *The Canovanas Factory did not finish grinding its last years' crop until the 29th of July. There were several breakages of the machinery.* * * * Such breakages happen in all mills during the season," pp. 69-70.

Antonio Roig said:

The word 'zafra,' as used for the grinding season means six months. It is supposed to begin in January and finish in June, but sometimes it runs into July; it includes all of the month of June; it begins after the 6th of January. I am president of the Juncos Factory Company, I live 20 minutes from Defendant's Factory but from my factory, from my house, it is one hour's ride in a carriage. *As a rule the mills in that neigh-*

borhood do not finish their grinding in time; they make contracts to grind from January to June, but sometimes they grind in July and August. Witness has ground in August; it depends on the weather, breakage of factory and other circumstances, p. 71.

Thomas Subirana said:

*"that he lives in Juncos and is the manager of the Juncos Sugar Factory, which is 18 or 20 kilometers from the defendant's factory. The Juncos Factory ground in 1908 until the 29th of July. * * * In the neighborhood of Juncos and the Defendant sugar factories the word 'zafra' means the intervening time between January and the time when the crop ends, six months," p. 72.*

E. G. F. Vangas said:

*"The word 'zafra' is understood in Porto Rico to mean the grinding season. The time of the grinding season depends upon the quantity of cane, the prevailing weather, and interruptions or breakages of machinery. THERE IS NO GENERAL CUSTOM WHICH FIXES THE SEASON, THE 'ZAFRA,' WITHIN DEFINITE LIMITS. Some factories finish grinding in May, and others in August. If they do not finish grinding until August, it results in damage to the factory. There is no damage to the farmer, because those canes could be ground the next year at the same time, or they could be left to what is known as 'gran cultura.' * * * The word 'zafra' refers to the whole grinding season without referring to particular months. Under normal conditions the grinding season depends on the location or coast; on the southern coast they start in the month of December; in the northern and eastern part it generally starts after the 15th of January and it ends in June, July, and sometimes in August," p. 72-73.*

Thus it appears that after Lorenzo had entirely failed to prove affirmatively the existence of any such custom as he alleged, the Porto Rico Sugar Company prove negatively by overwhelming testimony that no such custom existed. On the oral argument the undersigned read to this Court the following authority which demonstrates that when the evidence of *usage* offered to the Jury is insufficient, *as viewed by the trial court*, to prove *custom*, it is the duty of the trial court to exclude it entirely from the consideration of the jury. Parsons in his work on contracts, vol. ii, p. 673 *seq.*, 7th ed., has thus stated the rule:

"Custom and usage are very often spoken of as if they were the same thing. But this is a mistake. Custom is the thing to be proven, and usage is the evidence of the custom. Whether a custom exists is a question of fact. But in the proof of this fact *questions of law of two kinds may arise*. One whether the evidence is admissible, which is to be settled by the common principles of the law of evidence. The other, *whether the facts stated are legally sufficient to prove a custom*. If one man testifies that he had done a certain thing once, and had heard that his neighbor had done it once, *this evidence would not be given to the jury for them to draw from it the inference of custom if they saw fit, because it would be legally insufficient*. But if many men testified to a uniform usage within their knowledge, and were uncontradicted, the court would say whether this usage was sufficient in quantity and quality to establish a custom." This author says (vol. II, p. 671) by the word "custom" must be understood "that ancient and universal, and perfectly established custom, which is in fact law; * * * And it comes within this reason only when it is so far established, and so far known to the parties, that it must be supposed that their contract was made in reference to it."

The trial judge was thus compelled to know:

I. THAT THE EXISTENCE OF THE CUSTOM WITH WHICH LORENZO SOUGHT TO SUPPLEMENT THE WRITTEN CONTRACT HAD NOT BEEN ALLEGED IN HIS COMPLAINT. (See Record, p. 54.)

II. HE WAS COMPELLED TO DETERMINE WHETHER THE EVIDENCE OFFERED AS TO "USAGE WAS SUFFICIENT IN QUANTITY AND QUALITY TO ESTABLISH A CUSTOM." IF IT WAS NOT, IT WAS HIS DUTY TO EXCLUDE IT FROM THE JURY. For that reason the Sugar Company moved for a non suit which was overruled (Record, p. 66).

III. HE WAS COMPELLED TO KNOW THAT NEITHER THE PLAINTIFF HIMSELF NOR ANY WITNESS IN HIS BEHALF EVER SAID, EVEN ONCE, THAT THERE EXISTED IN PUERTO RICO SUCH AN "ANCIENT AND UNIVERSAL, AND PERFECTLY ESTABLISHED CUSTOM, * * * SO FAR ESTABLISHED, AND SO FAR KNOWN TO THE PARTIES, THAT IT MUST BE SUPPOSED THAT THEIR CONTRACT WAS MADE IN REFERENCE TO IT.

IV. HE WAS COMPELLED TO KNOW THAT THE WITNESSES FOR THE SUGAR COMPANY PROVED BEYOND ALL QUESTION THAT NO SUCH CUSTOM EXISTED IN PUERTO RICO. IN THE WORDS OF VANGAS, AN EXPERT, "THE WORD 'ZAFRA' IS UNDERSTOOD IN PUERTO RICO TO MEAN THE GRINDING SEASON. * * * THERE IS NO GENERAL CUSTOM WHICH FIXES THE SEASON, THE 'ZAFRA,' WITHIN DEFINITE LIMITS. SOME FACTORIES FINISH GRINDING IN MAY AND OTHERS IN AUGUST."

Instead of excluding from the Jury the entirely inadequate and insufficient evidence as to usage, inadequate both "in quantity and quality to establish a custom," the trial judge, against the exceptions of the Sugar Company, submitted it to the jury; and then refused the following charge:

"That as a matter of law a contract means the meeting of two minds of the contracting parties upon the same subject matter; and that if there is no evidence that both parties to the contract have interpreted the word 'zafra' or grinding season to grind from January up to the 30th of June, then there was no such contract without the meetings of both minds to that effect." (Record, p. 87.)

The Court should read the strictures of Mr. Justice Story in *Rogers v. Mechanics Ins. Co.*, 1 Story, 603, in which he says he is "no friend to the indiscriminate admission of evidence of supposed usages and customs in a peculiar trade and business, and of the understanding of witnesses relative thereto, which has been in former times so freely resorted to."

Can a judgment, *predicated upon a custom that never existed*, be upheld by this Court?

In this memorandum the undersigned has printed, for the convenience of the Court, only the extracts read by him, from the record as to the existence of the usage in question; the passages from Parsons applicable to such extracts; and the remarks made thereon by him at the close of the oral argument. All of which is respectfully submitted.

HANNIS TAYLOR,
Of Counsel for Plaintiff in Error.